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RESERVATIONS: 202–523–4538

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Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 62, No. 226
Monday, November 24, 1997

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 351, 430, and 531

RIN 3206–AH32

Reduction in Force and Performance Management

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that enhance the opportunity for Federal employees to receive reduction in force retention service credit based on their actual job performance. The regulations also give agencies with employees who have been rated under different patterns of summary rating levels a mechanism to take this into account when providing employees additional retention service credit for reduction in force. These regulations also clarify certain other retention rights, including the coverage of employees serving under term appointments.

DATES: Effective date: December 24, 1997. Compliance dates: Subject to the requirements of 5 U.S.C. 7116(a)(7), agencies may implement revised §§ 351.504 and 351.803(a), at any time between December 24, 1997 and October 1, 1998. For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either §§ 351.504 and 351.803(a) effective December 24, 1997 or the prior §§ 351.504 and 351.803(a) in 5 CFR part 351 (January 1, 1997, edition).

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon, Jacqueline Yeatman, or Edward P. McHugh (part 351); (202) 606–0960, FAX (202) 606–2329; or Barbara Colchao or Doris Hausser (parts 430 and 531); (202) 606–2720, FAX (202) 606–2395.

SUPPLEMENTARY INFORMATION: On February 4, 1997, OPM issued proposed regulations concerning reduction in force and performance management. These proposed changes were designed to enhance the opportunity for Federal employees to receive reduction in force retention credit based on their actual job performance. They proposed changes to the crediting procedures used when employees are missing performance ratings, as well as giving agencies the authority to vary performance credit in reduction in force to take into account ratings given under different summary level patterns.

We received comments from 21 agencies, 4 unions, and 3 individuals. Not every commenter mentioned every proposed provision. The key changes OPM proposed in the regulations are summarized below, along with a summary of the comments received on that particular proposal.

Providing Retention Service Credit When Employees in the Same Reduction in Force Competitive Area Have Been Rated Under More Than One Pattern of Summary Rating Levels

On August 23, 1995, OPM issued final regulations, at 60 FR 43936, giving agencies the option to determine which of eight permissible patterns of summary rating levels to use for their performance appraisal programs. As a result, changes in the crediting of performance in reduction in force were necessary because this flexibility in the design of performance appraisal programs can affect employees' relative retention standing for reduction in force. The proposed regulations revised 5 CFR 351.504 to require an agency to take into account different patterns of summary rating levels when providing employees additional retention service credit in reduction in force competition based on their performance.

Under the proposed regulations, an agency with employees in a reduction in force competitive area who have been rated under different patterns of summary rating levels must decide how many years of retention service credit within the allowable range of 12 to 20 years to assign to particular summary rating levels in their patterns. The specific method selected by the agency to provide retention service credit for performance will of necessity be specific to the reduction in force competitive area as the agency takes into account the combination of rating patterns used and the relative numbers of employees rated under each pattern.

If an agency has reduction in force competitive areas in which all employee ratings of record to be credited were given under the same pattern of summary levels, it is required to follow the current regulations for crediting performance in a reduction in force which now appear in paragraph (d) of section 351.504.

In applying the proposed regulations, agencies must treat employees within the reduction in force competitive area in a uniform and consistent manner. An agency carrying out a reduction in force may provide different amounts of additional retention service credit for ratings of record received in an employee's former agency than were provided by that former organization.

The majority of comments received on this proposal were very positive. Most of those who commented felt it was a necessary and logical outgrowth of performance rating flexibility that would be helpful to both agencies and employees. This proposal was especially well-received by those considering, or already using, alternative performance appraisal programs such as a 2-level (''Pass/Fail'') program. Some agencies requested even greater flexibility to address what they see as potential inequities when employees in different competitive areas are rated under different appraisal programs, even if there is no inconsistency within each competitive area. This was deemed especially crucial to agencies having various offices or components using different summary rating patterns.

One commenter voiced the concern that employees rated as ''Fully Successful'' under a two-level program could actually be performing at very different levels. Another suggested that the proposal be modified in order to prevent an agency from giving less credit to an employee's ratings of record from their previous agency than to the agency's ''own'' ratings. Several other commenters suggested that specific mandates be established on how this flexibility is to be used.

OPM has carefully considered these suggestions and decided not to adopt them. We believe that many of these concerns are rooted in decisions about

using various types of performance appraisal programs in the first place, and most would be addressed by the requirement to provide uniformity and consistency within each competitive area. For example, an agency assigning 16 years of credit to a ''fully successful'' rating of record earned under a two-level program must give ALL employees who earned a ''fully successful'' rating of record in a two-level program this credit, no matter what agency or organization actually issued the rating. Granting additional flexibility, by definition, allows for decision-making that some may disagree with. Alternatively, an agency is free to choose a crediting system that mirrors the current 12/16/20 year pattern required for use in single-rating-pattern situations (they are required to examine the situation when multiple rating patterns exist, but there is no requirement to adopt any particular crediting method). In addition, agencies concerned about consistency are free to establish their own agencywide policies on how this flexibility will be used.

One commenter suggested that no additional credit beyond 12 years be provided for performance above the level of ''Fully Successful''. We have not adopted this suggestion since it goes beyond the scope of the proposal and because the new regulations would give agencies the flexibility to assign credit in this way if they choose, as long as ratings of record are assigned under more than one summary pattern in the competitive area.

Extending the ''look-back'' period to 6 years

This element of the proposal addressed the circumstance where employees have received fewer than three actual ratings of record in the last 4 years, which could occur due to a variety of circumstances. Current regulations require the substitution of an assumed rating of ''Fully Successful'' for each missing rating of record. To minimize the use of assumed ratings and to maximize the extent to which additional retention service credit is based on actual job performance, OPM proposed to lengthen the period of time from which ratings of record are taken into account from 4 years to 6 years prior to the reduction in force. This change would have been phased in to allow agencies time to change their recordkeeping procedures.

Several of those who commented supported this proposal, believing that the potential for increasing the use of actual performance appraisals earned by employees outweighed the additional record-keeping requirements it would impose on agencies. Some even suggested that we modify the proposal to allow agencies to go back longer than 6 years when necessary. However, the majority of commenters disagreed with the proposed lengthening of the ''look-back'' period from 4 years to 6 years, even with the phase-in provisions. The objections centered on the view that a 6-year-old appraisal is too dated to serve as an accurate indicator of current employee performance, and that allowing older appraisals to be used in reduction in force might discourage supervisors from preparing current appraisals when required. Some were also concerned that these additional administrative requirements were unduly burdensome, especially in light of the current emphasis on simplification, paperwork reduction, and streamlining. We have considered these comments, as well as the possibility of providing agencies with flexibility to determine what the length of their ''look-back'' period should be for specific reductions in force. We concluded that the significant additional administrative requirements resulting from a 6-year ''look-back'' do not justify the results, especially since the other changes provided for in this regulatory package would significantly reduce the number of assumed ratings. For these reasons, we concluded that the current ''look-back'' period of 4 years should be retained.

Averaging actual ratings received if fewer than three

To further enhance the use of actual performance in determining reduction in force service credit, OPM proposed to remove the requirement to fill in missing ratings of record with assumed ''fully successful'' ratings when an employee has received only one or two actual ratings of record. Under the proposal, the actual rating(s) of record available would serve as the sole basis of the employee's credit, and no assumed ratings would be used. Consequently, if an employee has received only two actual ratings of record during this period, the value assigned to each rating would be added together and divided by two to determine the amount of additional retention service credit.

Among those who commented on this proposal, there was an almost equal number of those who supported it and those who did not. Most of those opposing the proposed change cited the greater weight that would necessarily be placed on the one or two actual ratings of record received. One commenter was concerned that supervisors would be less likely to complete ratings of record as a result of this proposal. A number of commenters, however, supported this proposal because it simplifies the process and allows an employee's actual demonstrated performance to take the place of an artificially prescribed level of credit (assumed ''Fully Successful''). In considering the comments received on this issue, we were persuaded that this change would serve to simplify the procedure and would increase the emphasis on actual performance, a stated goal of the proposed regulations. Therefore, we are adopting this proposal in the final regulations.

Crediting performance for employees with no actual ratings

OPM had proposed two methods of providing performance credit for reduction in force in cases where an employee would have no actual ratings of record at all. Under the proposed regulations, an employee with at least one year of current continuous service would be given the additional retention service credit for the most common, or ''modal'', summary rating level, as defined in 5 CFR 351.203, for the summary level pattern that applies to the employee's position at the time of the reduction in force. The proposal would allow agencies to determine the modal rating using ratings of record in the competitive area, in a larger subdivision of the agency, or agencywide, as long as the applicable modal rating(s) was applied uniformly and consistently within the competitive area to all employees with no ratings of record.

Under the proposal, the modal rating would not be used for employees who have completed less than one year of current continuous service. Instead, additional retention service credit would be given based on a Level 3 (Fully Successful or equivalent) rating of record under the summary level pattern that applies to the employee's position at the time of reduction in force.

Those who commented negatively on this proposal disliked the idea of using a modal rating because it did not represent performance actually demonstrated by the employee. Some felt the use of a modal rating was arbitrary and unfair, and potentially vulnerable to appeal or other challenge, while others saw it as more fair to employees than an assumed ''fully successful'' rating that now falls below the Governmentwide average rating. Several agencies were also concerned with how this requirement would be incorporated into existing automated systems.

One commenter suggested that the regulations be revised to require that all employees with at least one year of service must have a rating of record before a reduction in force can be conducted. We have not adopted this suggestion because we feel it is impossible to require a rating of record in all circumstances, given the various rating cycle dates and other circumstances that can occur.

One of those who commented suggested that employees who have received no ratings of record should receive no performance credit for reduction in force. We have not adopted this suggestion because we believe it unfairly and severely penalizes an employee who has no ratings of record due to factors completely outside his/her control. We believe that some reasonable and fair method of constructing performance credit is necessary to deal with these circumstances.

It is important to note that the modal rating would only be used in cases where the employee has no ratings of record of his/her own to credit. Since no rating of record exists, some form of ''assumed'' rating is the only recourse available. Because the modal rating is the summary level that was given most often to employees in the organization conducting the reduction in force, we believe it is the best way to assign credit with the least disadvantage to an individual employee who has no rating of record reflecting his/her actual performance.

Much of the opposition to the modal rating proposal focused on the complexity for personnelists in administering two different types of formulae based on length of service (less than one year means use assumed ''Fully Successful'; more than one year requires tabulation of modal rating). Some saw this as contradictory to ongoing simplification initiatives. In addition, several commenters pointed out that this distinction could result in an employee with 364 days of service being treated differently (in terms of performance credit for reduction in force) than another employee with 366 days of service. We agree that the distinction based on length of service adds greater complexity to the process, and we have therefore eliminated this distinction in the final regulations. Instead, the modal rating will be used to grant performance credit in reduction in force for all employees who have no ratings of record. We feel this better supports the principles of uniformity and consistency in the reduction in force treatment of employees.

Several commenters requested that OPM designate the basis used by agencies to determine their modal ratings (i.e., agencywide; agency subdivision; or competitive area). They also asked that agencies not be allowed to change this basis once it is selected without OPM and/or union approval. However, agencies have different data systems and not all will have a great deal of flexibility in terms of tabulating modal ratings. Some may only have agencywide performance appraisal data to work with. We felt that it was necessary to preserve this flexibility for determining the basis used for tabulating modal ratings to ensure that all agencies are able to implement this requirement. However, we would encourage agencies to consider making this determination in partnership with employees and their representatives.

Use of Non-430 Ratings in Reduction in Force

OPM proposed language in the revised section 351.504 that would require agencies to use all ratings of record given to employees for assigning additional retention service credit during a reduction in force, including a performance evaluation given to an employee under an appraisal system not covered by the provisions of 5 CFR part 430, subpart B, if it meets the conditions specified in the new paragraph (c) of section 430.201.

Those who commented in support of this proposal felt it was appropriate to give credit for such ratings in a reduction in force if they were equivalent to those given under part 430.

One commenter disagreed with the proposal, believing it would be too difficult for agencies to establish the equivalent summary pattern and rating level for these non-430 ratings. We have considered this objection; however, we feel that agencies should be able to make these determinations with help from the agency that gave the rating and/or members of OPM's performance management staff.

Implementation Date Issues

(1) Performance in Retention Service Credit Determinations

The new agency authority to determine retention service credit when employees in a competitive area are rated under multiple rating patterns described in § 351.504(e) would apply only to ratings of record that are put on record, as defined in paragraph (b)(3) of § 351.504, on or after October 1, 1997. The agency credits any ratings of record put on record on or before September 30, 1997, based on the Governmentwide 12-, 16-, and 20-year formula for additional retention service credit currently in effect.

Agencies were divided on their preference for which ratings of record could be assigned credit using the new flexibility. While some wanted to be able to establish credit for ratings of record given since 1995 (when performance management was deregulated), others wished to establish credit only for ratings of record given under cycles begun after October 1, 1997. OPM originally proposed that the flexibility would apply to ratings of record put on record on or after October 1, 1997, and has decided to retain this provision in the final regulation.

A related issue was the effective date of the regulations and its effect on the implementation of some of the provisions, particularly those affecting the flexible assignment of service credit and situations where fewer than three ratings of record are available. Concerns such as the lead time required for changes in the automation of RIF processing programs, and the need to meet collective bargaining requirements prior to the implementation of these regulations were also raised during the comment process. OPM originally proposed implementation on October 1, 1997. We have considered the suggestions received on this issue and have determined that overall fairness is best managed through giving agencies the flexibility to implement the provisions of Sections 351.504 (crediting performance) and 351.803 (notice of eligibility for reemployment and other placement assistance), at any time between the effective date of these regulations and October 1, 1998. Agencies are required to apply the provisions used in a uniform and consistent manner to all employees in a given RIF competitive area.

When crediting performance in a reduction in force, agencies would have the option to implement immediately as of the effective date of these regulations the provisions for establishing credit when ratings of record were given under mixed summary level patterns (351.504(e)) and the use of the modal value for missing ratings as well as averaging only actual ratings of record found during the 4-year ''look-back'' period (351.504(c)). At its discretion, an agency could decide to delay implementation of these provisions until no later than October 1, 1998, and continue to use the performance crediting provisions in the current § 351.504 (i.e., those in effect on January 1, 1997).

The effect of the provisions in paragraphs 351.504 (b) and (d) remain unchanged by the new regulations. When applying paragraph 351.504(a), the context created by the new definition for rating of record and other regulatory changes will permit the use of non-430 ratings under the conditions specified even when an agency is using the older version of 5 CFR 351.504.

This gives agencies able to proceed immediately the opportunity to do so, without forcing others that need time to complete more extensive preparations into an unrealistic time frame. However, for reduction in force actions effective after September 30, 1998, the new provisions for crediting mixed-pattern ratings of record and handling situations where ratings are missing must be applied by all agencies.

(2) Implementation of Provisions During Ongoing Reductions

Several commenters mentioned their concern that ongoing reductions in force would be disrupted by the requirement to implement these provisions. Revising the procedures for handling missing ratings of record and crediting performance under multiple rating patterns could result in changed reduction in force outcomes, new notices, and additional delays due to notice period requirements. We agree that this would prove unnecessarily disruptive to both agencies and employees. However, we believe that giving agencies the option to implement the provisions of sections 351.504 and 351.803 at any time up until October 1, 1998, will allow them to take into account any upcoming reduction in force activity and plan accordingly.

Technical Amendments

OPM proposed a number of technical changes in parts 351, 430 and 531, which served to clarify existing regulations in various areas. These included redefinition of rating of record under part 351 to refer to the part 430 definition, provisions for handling employees with a written notice of pending action under part 752 similarly to those with action pending under part 432, changes to the critical element definition, barring non-critical elements in two-level appraisals, and clarifications of: appraisal period, acceptable level of competence determinations, competitive area, competitive level, procedures for determining grade intervals for assignment, expiration and amendment of reduction in force notices, assignment rights optionally provided to excepted service employees, and coverage of term employees under retention subgroups.

We received comments on some of these proposed clarifications. One suggested rewording of the definition of rating of record to better reflect that this rating belongs to the employee rather than the agency. We agree and have adopted this suggestion.

Several commenters asked what date should be used as the effective date of a rating of record. Perhaps contributing to their confusion are changes to the way ratings of record are reported to the Central Personnel Data File. While a rating of record is a personnel action, OPM no longer requires that it be reported separately with its own distinct nature of action code (009). Rating of record information is now transmitted to OPM via other standard reporting procedures. When a separate nature of action code was used, the previous reporting procedures specified that the effective date for a rating of record was the ending date of the appraisal period to which the rating applied. The new procedures capture this same information as an isolated data element and eliminate the need for separate processing of many thousands of actions. It is OPM's view that the ending date of the applicable appraisal period is the effective date of the rating of record, and this date should be used to determine whether or not a rating of record falls within the 4-year ''look-back'' period.

Section 5 CFR 351.402(b) clarifies OPM's longstanding policy on the minimum standard for a reduction in force competitive area. All of the comments on this proposed revision supported the change, and the proposed regulation is adopted without further modification.

To conduct a reduction in force, section 5 CFR 351.402(a) provides that the agency must establish the applicable competitive area that is the boundary within which employees compete for retention under reduction in force procedures.

Section 5 CFR 351.402(b) provides that employees in a competitive area compete for retention under OPM's reduction in force regulations only with other employees in the same competitive area. Employees do not compete for retention with employees of the agency in another competitive area.

Section 5 CFR 351.402(b) provides that the agency must define each competitive area solely in terms of organizational unit and geographical location. The competitive area then includes all employees within the organizational unit and geographical location that is included in the competitive area definition. Each employee competes with all other employees in the competitive area for positions under OPM's retention regulations. There is no minimum or maximum number of employees in a competitive area. Also, in any one reduction in force, an agency may not use one competitive area for the first round of competition and a different competitive area for second rounds of competition.

Section 5 CFR 351.402(b) clarifies that the minimum competitive area for any agency component is a subdivision of the agency within the local commuting area that is under separate administration. An agency may establish separate competitive areas for different components in the same local commuting area if each component is under separate administration, which includes that each is independent of the other in operation, work function, and staff.

As used for purposes of establishing a minimum competitive area consistent with section 5 CFR 351.402(b), ''separate administration'' is the administrative authority to take or direct personnel actions (i.e., the authority to establish positions, abolish positions, assign duties, etc.) rather than the issuance or processing of the documents by which these decisions are effected. This separate administration is evidenced by the agency's organizational manual and delegations of authority that document where, in the organization, final authority rests to make these decisions. (The competitive area standard also recognizes that many agencies retain certain personnel-related actions such as classification authority or final approval of higher-graded positions to a central authority above the organizational standard required for a minimum competitive area).

The same standard is used for a minimum competitive area in a local commuting area in both a headquarters organization or field component. Former references in 5 CFR 351.402(b) to organizational units that could comprise a minimum competitive area in a headquarters organization or field component were examples of where separate administration is often found in agencies. These references were deleted in final 5 CFR 351.402(b) to clarify that the same minimum competitive area standard is applicable whether the organizational unit is headquarters, a field activity, a duty station, or other applicable organization.

Under 5 CFR 351.402(b), an agency may establish a competitive area that is larger than the minimum standard. However, a competitive area may not be smaller than the minimum standard.

The fact that several activities may be serviced by the same personnel office does not, of itself, require that they be placed in the same competitive area. The personnel office merely processes personnel actions rather than having final responsibility to make decisions on whether to establish positions, abolish positions, assign duties, *etc.*

Another commenter felt that the proposal did not go far enough in dealing with employees who have received written decisions under part 752, and suggested that those employees be excluded from reduction in force competition altogether. There is, however, no basis in law to eliminate the right of these employees to remain in reduction in force competition until they are actually removed from Federal service. Therefore, this suggestion was not adopted.

OPM had also proposed changes to the requirements for reduction in force separation notices to include an estimate of severance pay if applicable, and information on benefits available under new subparts F and G (Career Transition Assistance Programs) of part 330 of this chapter and from the applicable State dislocated worker unit(s), as designated or created under title III of the Job Training Partnership Act. To increase placement opportunities for employees affected by downsizing, the proposed section also required that agencies give employees receiving a reduction in force separation notice a release to authorize, at their option, the release of their resumes for employment referral to State dislocated worker unit(s) and potential public and private sector employers. OPM is developing material for this purpose.

A few commenters were concerned that these requirements would place a greater burden on personnel offices and reduce the emphasis on employee empowerment that is central to successful career transition programs. One felt the role of obtaining authorization for release of resumes belonged solely with the placement coordinator, and that this did not belong with the reduction in force notice since placement efforts would already be well underway by the time reduction in force notices are issued.

We agree that, ideally, placement efforts should begin long before reduction in force notices are issued. However, this is not always possible. We have considered these comments carefully and feel that providing a release that can be completed entirely at the employee's option remains within the spirit of empowerment and simply serves as another vehicle for coordination between Federal Government and other public and private employers that will hopefully aid employees in the transition process. Many agencies have personnel office staff who serve in dual roles, both conducting the reduction in force and assisting employees in placement. Since a reduction in force notice is issued to all employees being separated, it provides a unique opportunity for the agency to give employees career transition information and to ensure that all employees being separated will receive it. However, in recognition of the fact that agencies will need time to modify their reduction in force notices, we have made this provision one of those which may be implemented at any time between the effective date of these regulations and October 1, 1998. All notices issued on or after October 1, 1998, must meet the requirements of these regulations.

One commenter was concerned that the severance pay estimate calculation might be open to challenge if it was later found to be in error. They suggested instead that agencies provide information on how to compute severance pay and let employees do the calculations themselves. We have not adopted this suggestion because we believe agency-developed severance pay estimates are much more likely to be accurate than those done by employees. Further, we would emphasize that agencies should clearly indicate that their severance pay calculations are merely estimates, as many agencies do now, but that employees are ultimately responsible for verifying these estimates.

Several commenters suggested that we add a requirement that specific information on the employee's competitive level, including the names of employees in various levels, be added to the notice. Information of this type is normally discussed during reduction in force counseling sessions between affected employees and knowledgeable personnel specialists. Releasing this type of information in a reduction in force notice has serious privacy implications and would not be useful in isolation, nor would it serve to help the employee better understand his/her reduction in force rights without counseling. Therefore, we have not adopted this suggestion.

Another commenter questioned the restriction in the definition of critical elements to individual performance only, especially in light of the workplace trends toward team performance. We do not disagree with the observation that team work is becoming more prevalent in the workplace and should be captured when measuring performance. In recognition of the importance of team work in many organizations, the performance management regulations specifically provide for the use of non-critical elements that can address performance measured at the team level and that impact the summary level, which can be particularly useful in making performance distinctions above the Fully Successful (or equivalent) level. In addition, the regulations permit the use of critical elements to measure the individual's contribution to the team's success or failure. However, it would be inappropriate to allow a single team failure (i.e., failed team critical element) to result automatically in every individual on the team being designated as Unacceptable when some of the individual performance within the team is probably Fully Successful or better.

Critical elements are the cornerstone of individual accountability in employee performance. Therefore, they should not be used to measure performance over which the employee is not intended or expected to exercise individual control or authority. In addition, there is the prohibition that non-critical elements cannot be used with a two-level summary pattern (i.e., pass/fail). Organizations that summarize performance at only two levels can choose to incorporate additional performance elements to identify and measure team accomplishments. We, therefore, made no change to this proposal.

One commenter suggested that a within-grade increase following a delay, based on the circumstances stated in the regulations and a subsequent rating of record of Level 3 or higher, should be paid retroactively. Because no change was, or is, proposed to the current language at 5 CFR 531.409(c)(2)(iii) that addresses a retroactive within-grade increase following a delay in the acceptable level of competence determination, that paragraph had not appeared in the proposed regulations as printed in the **Federal Register**. Because that current language will remain in effect, the commenter's concern is already accommodated.

One commenter suggested that within-grade delay procedures should be incorporated into agency performance management plans and, thereby, be subject to OPM review and approval. Within-grade delay is prescribed by regulation because it is a procedure where Governmentwide consistency is appropriate. There is no value added to having OPM review agency procedures implementing such uniform regulations. Furthermore, the Performance Management Plan alluded

to is no longer required because, in part, the 1995 revision was designed to eliminate needless repetition of regulatory language. Therefore, this suggestion was not adopted.

Several other suggestions for minor wording changes to provide greater clarification were adopted where we felt they were warranted. Most of the requests for clarification or additional discussion would be more appropriately handled through individual discussions between OPM staff and agency personnelists, which we are happy to provide upon request. In addition, some comments were provided that addressed reduction in force and performance management issues that were outside the scope of these proposed regulations, such as changing the way performance is used relative to the other reduction in force factors; these suggestions were not adopted since they were not pertinent to the specific proposals made in these regulations. Suggestions for wording changes to 5 CFR part 293 were not adopted because we felt there was no basis for issuing revised regulations in this area as long as we were eliminating the proposal to lengthen the ''look-back'' period for ratings of record.

To the extent practicable, these regulations should be implemented by agencies in partnership with management and employees' union representatives.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Part 430

Decorations, medals, awards, Government employees.

5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

Accordingly, OPM is amending parts 351, 430, and 531 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

4. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

5. In § 351.203, the definition of *''Annual Performance rating of record''* is removed, and the definitions of *Current rating of record*, *Modal rating*, and *Rating of record* are added in alphabetical order, to read as follows:

§ 351.203 Definitions.

* * * * *

Current rating of record is the rating of record for the most recently completed appraisal period as provided in § 351.504(b)(3).

* * * * *

Modal rating is the summary rating level assigned most frequently among the actual ratings of record that are:

(1) Assigned under the summary level pattern that applies to the employee's position of record on the date of the reduction in force;

(2) Given within the same competitive area, or at the agency's option within a larger subdivision of the agency or agencywide; and

(3) On record for the most recently completed appraisal period prior to the date of issuance of reduction in force notices or the cutoff date the agency specifies prior to the issuance of reduction in force notices after which no new ratings will be put on record.

Rating of record has the meaning given that term in § 430.203 of this chapter. For an employee not subject to 5 U.S.C. Chapter 43, or part 430 of this chapter, it means the officially designated performance rating, as provided for in the agency's appraisal system, that is considered to be an equivalent rating of record under the provisions of § 430.201(c) of this chapter.

* * * * *

7. In § 351.402, paragraph (b) is revised to read as follows:

§ 351.402 Competitive area.

* * * * *

(b) A competitive area must be defined solely in terms of the agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an agency. The minimum competitive area is a subdivision of the agency under separate administration within the local commuting area.

* * * * *

8. In § 351.403, paragraph (c) is added to read as follows:

§ 351.403 Competitive level.

* * * * *

(c) An agency may not establish a competitive level based solely upon:

(1) A difference in the number of hours or weeks scheduled to be worked by other-than-full-time employees who would otherwise be in the same competitive level;

(2) A requirement to work changing shifts;

(3) The grade promotion potential of the position; or

(4) A difference in the local wage areas in which wage grade positions are located.

9. In § 351.404, paragraph (a) introductory text, and paragraph (b)(2), are revised to read as follows:

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Upon displacing another employee under this part, an employee retains the same status and tenure in the new position. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

* * * * *

(b) * * *

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision of removal under part 432 or 752 of this chapter.

10. Section 351.405 is revised to read as follows:

§ 351.405 Demoted employees.

An employee who has received a written decision under part 432 or 752 of this chapter to demote him or her competes under this part from the position to which he or she will be or has been demoted.

11. In § 351.501, paragraph (b)(3) is revised to read as follows:

§ 351.501 Order of retention—competitive service.

* * * * *

(b) * * *

(3) Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of a register, status quo appointments, term appointments, and

any other nonstatus nontemporary appointments which meet the definition of provisional appointments contained in §§ 316.401 and 316.403 of this chapter.

* * * * *

12. Section 351.504 is revised to read as follows:

§ 351.504 Credit for performance.

Note to § 351.504: Compliance dates: Subject to the requirements of 5 U.S.C. Section 7116(a)(7), agencies may implement revised § 351.504 at any time between December 24, 1997 and October 1, 1998. For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either § 351.504 effective December 24, 1997, or the prior § 351.504 in 5 CFR part 351 (January 1, 1997 edition).

(a) *Ratings used.* (1) Only ratings of record as defined in § 351.203 shall be used as the basis for granting additional retention service credit in a reduction in force.

(2) For employees who received ratings of record while covered by part 430, subpart B, of this chapter, those ratings of record shall be used to grant additional retention service credit in a reduction in force.

(3) For employees who received performance ratings while not covered by the provisions of 5 U.S.C. Chapter 43 and part 430, subpart B, of this chapter, those performance ratings shall be considered ratings of record for granting additional retention service credit in a reduction in force only when it is determined that those performance ratings are equivalent ratings of record under the provisions of § 430.201(c) of this chapter. The agency conducting the reduction in force shall make that determination.

(b)(1) An employee's entitlement to additional retention service credit for performance under this subpart shall be based on the employee's three most recent ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices, except as otherwise provided in paragraphs (b)(2) and (c) of this section.

(2) To provide adequate time to determine employee retention standing, an agency may provide for a cutoff date, a specified number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart. When a cutoff date is used, an employee will receive performance credit for the three most recent ratings of record received during the 4-year period prior to the cutoff date.

(3) To be creditable for purposes of this subpart, a rating of record must have been issued to the employee, with all appropriate reviews and signatures, and must also be on record (i.e., the rating of record is available for use by the office responsible for establishing retention registers).

(4) The awarding of additional retention service credit based on performance for purposes of this subpart must be uniformly and consistently applied within a competitive area, and must be consistent with the agency's appropriate issuance(s) that implement these policies. Each agency must specify in its appropriate issuance(s):

(i) The conditions under which a rating of record is considered to have been received for purposes of determining whether it is within the 4-year period prior to either the date the agency issues reduction in force notices or the agency-established cutoff date for ratings of record, as appropriate; and

(ii) If the agency elects to use a cutoff date, the number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart.

(c) *Missing ratings.* Additional retention service credit for employees who do not have three actual ratings of record during the 4-year period prior to the date of issuance of reduction in force notices or the 4-year period prior to the agency-established cutoff date for ratings of record permitted in paragraph (b)(2) of this section shall be determined under paragraphs (d) or (e) of this section, as appropriate, and as follows:

(1) An employee who has not received any rating of record during the 4-year period shall receive credit for performance based on the modal rating for the summary level pattern that applies to the employee's official position of record at the time of the reduction in force.

(2) An employee who has received at least one but fewer than three previous ratings of record during the 4-year period shall receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received. If an employee has received only two actual ratings of record during the period, the value of the ratings is added together and divided by two (and rounded in the case of a fraction to the next higher whole number) to determine the amount of additional retention service credit. If an employee has received only one actual rating of record during the period, its value is the amount of additional retention service credit provided.

(d) *Single rating pattern.* If all employees in a reduction in force competitive area have received ratings of record under a single pattern of summary levels as set forth in § 430.208(d) of this chapter, the additional retention service credit provided to employees shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's applicable ratings of record, under paragraphs (b)(1) and (c) of this section computed on the following basis:

(1) Twenty additional years of service for each rating of record with a Level 5 (Outstanding or equivalent) summary;

(2) Sixteen additional years of service for each rating of record with a Level 4 summary; and

(3) Twelve additional years of service for each rating of record with a Level 3 (Fully Successful or equivalent) summary.

(e) *Multiple rating patterns.* If an agency has employees in a competitive area who have ratings of record under more than one pattern of summary levels, as set forth in § 430.208(d) of this chapter, it shall consider the mix of patterns and provide additional retention service credit for performance to employees expressed in additional years of service in accordance with the following:

(1) Additional years of service shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the additional retention service credit that the agency established for the summary levels of the employee's applicable rating(s) of record.

(2) The agency shall establish the amount of additional retention service credit provided for summary levels only in full years; the agency shall not establish additional retention service credit for summary levels below Level 3 (Fully Successful or equivalent).

(3) When establishing additional retention service credit for the summary levels at Level 3 (Fully Successful or equivalent) and above, the agency shall establish at least 12 years, and no more than 20 years, additional retention service credit for a summary level.

(4) The agency may establish the same number of years additional retention service credit for more than one summary level.

(5) The agency shall establish the same number of years additional retention service credit for all ratings of record with the same summary level in the same pattern of summary levels as set forth in § 430.208(d) of this chapter.

(6) The agency may establish a different number of years additional retention service credit for the same summary level in different patterns.

(7) In implementing paragraph (e) of this section, the agency shall specify the number(s) of years additional retention service credit that it will establish for summary levels. This information shall be made readily available for review.

(8) The agency may apply paragraph (e) of this section only to ratings of record put on record on or after October 1, 1997. The agency shall establish the additional retention service credit for ratings of record put on record prior to that date in accordance with paragraph (d) of this section.

13. In § 351.602, paragraph (c) is revised to read as follows:

§ 351.602 Prohibitions.

* * * * *

(c) A written decision under part 432 or 752 of this chapter of removal or demotion from the competitive level.

14. In § 351.701, paragraph (f) is added to read as follows:

§ 351.701 Assignment involving displacement.

* * * * *

(f)(1) In determining applicable grades (or grade intervals) under §§ 351.701(b)(2) and 351.701(c)(2), the agency uses the grade progression of the released employee's position of record to determine the grade (or interval) limits of the employee's assignment rights.

(2) For positions covered by the General Schedule, the agency must determine whether a one-grade, two-grade, or mixed grade interval progression is applicable to the position of the released employee.

(3) For positions not covered by the General Schedule, the agency must determine the normal line of progression for each occupational series and grade level to determine the grade (or interval) limits of the released employee's assignment rights. If the agency determines that there is no normal line of progression for an occupational series and grade level, the agency provides the released employee with assignment rights to positions within three actual grades lower on a one-grade basis. The normal line of progression may include positions in different pay systems.

(4) For positions where no grade structure exists, the agency determines a line of progression for each occupation and pay rate, and provides assignment rights to positions within three grades (or intervals) lower on that basis.

(5) If the released employee holds a position that is less than three grades above the lowest grade in the applicable classification system (e.g., the employee holds a GS–2 position), the agency provides the released employee with assignment rights up to three actual grades lower on a one-grade basis in other pay systems.

15. In § 351.705, paragraph (a)(3) is revised to read as follows:

§ 351.705 Administrative assignment.

(a) * * *

(3) Provide competing employees in the excepted service with assignment rights to other positions under the same appointing authority on the same basis as assignment rights provided to competitive service employees under § 351.701 and in paragraphs (a) (1) and (2) of this section.

* * * * *

16. In § 351.802, paragraph (a)(2) is revised to read as follows:

§ 351.802 Content of notice.

(a) * * *

(2) The employee's competitive area, competitive level, subgroup, service date, and three most recent ratings of record received during the last 4 years.

* * * * *

17. In § 351.803, paragraph (a) is revised to read as follows:

§ 351.803 Notice of eligibility for reemployment and other placement assistance.

(a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration and career transition assistance under subparts B (Reemployment Priority List), F and G (Career Transition Assistance Programs) of part 330 of this chapter. The employee must also be given a release to authorize, at his or her option, the release of his or her resume and other relevant employment information for employment referral to State dislocated worker unit(s) and potential public or private sector employers. The employee must also be given information concerning how to apply both for unemployment insurance through the appropriate State program and benefits available under the State dislocated worker unit(s), as designated or created under title III of the Job Training Partnership Act, and an estimate of severance pay (if eligible).

Note to § 351.803(a): Compliance dates: Subject to the requirements of 5 U.S.C. 7116(a)(7), agencies may implement revised § 351.803(a) at any time between December 24, 1997 and October 1, 1998. For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either § 351.803(a) effective December 24, 1997, or the prior § 351.803(a) in 5 CFR part 351 (January 1, 1997 edition).

* * * * *

18. Section 351.804 is revised to read as follows:

§ 351.804 Expiration of notice.

(a) A notice expires when followed by the action specified, or by an action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action.

(b) An agency may not take the action before the effective date in the notice; instead, the agency may cancel the reduction in force notice and issue a new notice subject to this subpart.

19. Section 351.805 is revised to read as follows:

§ 351.805 New notice required.

(a) An employee is entitled to a written notice of, as appropriate, at least 60 or 120 full days if the agency decides to take an action more severe than first specified.

(b) An agency must give an employee an amended written notice if the reduction in force is changed to a later date. A reduction in force action taken after the date specified in the notice given to the employee is not invalid for that reason, except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for a reduction in force action as a result of the change in dates.

(c) An agency must give an employee an amended written notice and allow the employee to decide whether to accept a better offer of assignment under subpart G of this part that becomes available before or on the effective date of the reduction in force. The agency must give the employee the amended notice regardless of whether the employee has accepted or rejected a previous offer of assignment, provided that the employee has not voluntarily separated from his or her official position.

PART 430—PERFORMANCE MANAGEMENT

20. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43.

21. In § 430.201, paragraph (c) is added to read as follows:

§ 430.201 General.

* * * * *

(c) *Equivalent ratings of record.* (1) If an agency has administratively adopted and applied the procedures of this

subpart to evaluate the performance of its employees, the ratings of record resulting from that evaluation are considered ratings of record for reduction in force purposes.

(2) Other performance evaluations given while an employee is not covered by the provisions of this subpart are considered ratings of record for reduction in force purposes when the performance evaluation—

(i) Was issued as an officially designated evaluation under the employing agency's performance evaluation system,

(ii) Was derived from the appraisal of performance against expectations that are established and communicated in advance and are work related, and

(iii) Identified whether the employee performed acceptably.

(3) When the performance evaluation does not include a summary level designator and pattern comparable to those established at § 430.208(d), the agency may identify a level and pattern based on information related to the appraisal process.

22. In § 430.203, the definitions of *Critical element, Performance rating,* and *Rating of record* are revised to read as follows:

§ 430.203 Definitions.

* * * * *

Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level.

* * * * *

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical and non-critical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level within a pattern (as specified in § 430.208(d)).

* * * * *

Rating of record means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern (as specified in § 430.208(d)), or (2) in accordance with § 531.404(a)(1) of this chapter. These constitute official ratings of record referenced in this chapter.

23. In § 430.206, paragraphs (a)(2) and (b)(4) are revised, paragraphs (b)(6) and (b)(7) are redesignated as paragraphs (b)(7) and (b)(8) respectively, and a new paragraph (b)(6) is added to read as follows:

§ 430.206 Planning performance.

(a) * * *

(2) Each program shall specify a single length of time as its appraisal period. The appraisal period generally shall be 12 months so that employees are provided a rating of record on an annual basis. A program's appraisal period may be longer when work assignments and responsibilities so warrant or performance management objectives can be achieved more effectively.

(b) * * *

(4) Each performance plan shall include all elements which are used in deriving and assigning a summary level, including at least one critical element and any non-critical element(s).

* * * * *

(6) A performance plan established under an appraisal program that uses only two summary levels (pattern A as specified in § 430.208(d)(1)) shall not include non-critical elements.

* * * * *

24. In § 430.208, the introductory text to paragraph (d)(2) is revised, paragraph (d)(4) is revised, and a new paragraph (d)(5) is added to read as follows:

§ 430.208 Rating performance.

* * * * *

(d) * * *

(2) Within any of the patterns shown in paragraph (d)(1) of this section, summary levels shall comply with the following requirements:

* * * * *

(4) The designation of a summary level and its pattern shall be used to provide consistency in describing ratings of record and as a reference point for applying other related regulations, including, but not limited to, assigning additional retention service credit under § 351.504 of this chapter.

(5) Under the provisions of § 351.504(e) of this chapter, the number of years of additional retention service credit established for a summary level of a rating of record shall be applied in a uniform and consistent manner within a competitive area in any given reduction in force, but the number of years may vary:

(i) In different reductions in force;

(ii) In different competitive areas; and

(iii) In different summary level patterns within the same competitive area.

* * * * *

PART 531—PAY UNDER THE GENERAL SCHEDULE

25. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

26. In § 531.409, paragraphs (c)(1), (c)(2)(i), and (c)(2)(ii) are revised to read as follows:

§ 531.409 Acceptable level of competence determinations.

* * * * *

(c) *Delay in determination.* (1) An acceptable level of competence determination shall be delayed when, and only when, either of the following applies:

(i) An employee has not had the minimum period of time established at § 430.207(a) of this chapter to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position, and the employee has not been given a performance rating in any position within the minimum period of time (as established at § 430.207(a) of this chapter) before the end of the waiting period; or

(ii) An employee is reduced in grade because of unacceptable performance to a position in which he or she is eligible for a within-grade increase or will become eligible within the minimum period as established at § 430.207(a) of this chapter.

(2) * * *

(i) The employee shall be informed that his or her determination is postponed and the appraisal period extended and shall be told of the specific requirements for performance at an acceptable level of competence.

(ii) An acceptable level of competence determination shall then be made based on the employee's rating of record

completed at the end of the extended appraisal period.

* * * * *

[FR Doc. 97–30428 Filed 11–21–97; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–26]

RIN 0579–AA83

Karnal Bunt; Additions to Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations by adding portions of McCulloch, Mills, and San Saba Counties, TX, to the list of regulated areas and by expanding the boundaries of the regulated areas in La Paz, Maricopa, and Pinal Counties, AZ, due to the detection of Karnal bunt in those new areas. This action is necessary on an emergency basis to prevent the spread of Karnal bunt into noninfested areas of the United States.

DATES: Interim rule effective November 18, 1997. Consideration will be given only to comments received on or before December 24, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–26, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–016–26. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION: Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14.

The regulations in § 301.89–3(a) provide that the Administrator of the Animal and Plant Health Inspection Service will regulate each State, or each portion of a State, in which Karnal bunt, or any stage of development of *T. indica*, is present or in which circumstances exist that make it reasonable to believe that Karnal bunt is present. We currently require that a bunted wheat kernel be found in or associated with a field before an area will be designated a regulated area. A field's association with a bunted wheat kernel will be established when it has been determined that: (1) A bunted wheat kernel was found in the field during surveys; (2) seed from a lot contaminated with a bunted wheat kernel was planted in the field; or (3) the field was found during surveys to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

The regulations in § 301.89–3(b) provide that less than an entire State will be designated as a regulated area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the spread of Karnal bunt. The Administrator may also designate less than an entire State as a regulated area by exercising his or her extraordinary emergency authority under 7 U.S.C. 150dd when it is determined that a State is not taking adequate measures to prevent the spread of Karnal bunt.

Under § 301.89–3(e) of the regulations, a regulated area is further subdivided into areas classified as either restricted areas or surveillance areas. Restricted areas are further divided into restricted areas for seed and restricted areas for regulated articles other than seed. Restricted areas for seed are generally larger than restricted areas for regulated articles other than seed and surveillance areas, and will encompass both.

A restricted area for seed is a distinct definable area that includes at least one field that has been: (1) Found during survey to contain a bunted wheat kernel; (2) planted with seed from a lot found to contain a bunted wheat kernel; or (3) found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

Individual fields associated with a bunted wheat kernel, such as bunted kernels from a handling facility, are designated as restricted areas for regulated articles other than seed. The identity of those fields is determined using the same criteria discussed above with regard to restricted areas for seed, but it is the field itself, without any adjacent areas, that is designated as the restricted area for regulated articles other than seed.

A surveillance area is an area that includes at least one field that was either found during survey to contain a bunted wheat kernel, or that was found to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

All Karnal bunt host crops are prohibited from being planted in an area restricted for the movement of regulated articles other than seed. Under the regulations, a surveillance area surrounds an area restricted for the movement of regulated articles other than seed. While Karnal bunt host crops may be planted in the surveillance area, they may not be used for seed. Surrounding and encompassing the surveillance area is an area where the movement of seed is restricted unless certain conditions are met.

Recently, during surveys conducted as part of the National Karnal Bunt Survey, bunted wheat kernels were detected in areas of Texas that lie outside the regulated area in that State, and in fields in Arizona that are within the State's regulated area but outside of the established restricted areas for regulated articles other than seed and surveillance areas.

Therefore, in accordance with the criteria described above, we are amending the regulations to reflect those recent detections of bunted wheat kernels. Specifically, in Texas we are designating 17 fields in San Saba County as restricted areas for regulated articles other than seed; designating portions of McCulloch and Mills

Counties and all of San Saba County as restricted areas for seed; and designating portions of McCulloch, Mills, and San Saba Counties as surveillance areas. In Arizona, we are designating four fields—two in Maricopa County and one each in La Paz and Pinal Counties—as restricted areas for regulated articles other than seed and designating additional portions of those three counties as surveillance areas. The description of surveillance areas in La Paz, Maricopa, and Pinal Counties, AZ, has also been amended to make the boundary lines of the surveillance areas more accurate by removing nonagricultural acreage and areas outside the 3-mile radius used to establish the surveillance areas in Arizona. The boundaries of the new regulated areas in Texas and Arizona are set forth in the description of regulated areas contained in § 301.89–3(f) in the rule portion of this document.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent Karnal bunt from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Karnal bunt regulations by adding portions of McCulloch, Mills, and San Saba Counties, TX, to the list of regulated areas and by expanding the boundaries of the regulated areas in La Paz, Maricopa, and Pinal Counties, AZ, due to the detection of Karnal bunt in those new areas. This action is necessary on an emergency basis to prevent the spread of Karnal bunt into noninfested areas of the United States. This action imposes certain restrictions on the movement of regulated articles from regulated areas.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0121.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89–3, paragraph (f) is amended as follows:

a. Under the heading ''Arizona'', in paragraph (2), the entries for La Paz County, Maricopa County, and Pinal County are amended by adding, in numerical order, the field numbers set forth below, and paragraph (3) is revised to read as set forth below.

b. Under the heading ''Texas'', in paragraph (1), entries for McCulloch County, Mills County, and San Saba County are added, in alphabetical order, to read as set forth below; in paragraph (2), an entry for San Saba County is added, in alphabetical order, to read as set forth below; and paragraph (3) is revised to read as set forth below.

§ 301.89–3 Regulated areas.

* * * * *

(f) * * *

Arizona

* * * * *

(2) * * *

La Paz County.

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319052007

* * * * *

Maricopa County.

* * * * *

302112806

* * * * *

316150301

* * * * *

Pinal County.

* * * * *

315221403

* * * * *

(3) *Surveillance areas.*

La Paz County. Beginning at the northwest corner of sec. 6, T. 7 N., R. 21 W.; then east to the northeast corner of sec. 1, T. 7 N., R. 21 W.; then south to the southeast corner of sec. 1, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 6, T. 6 N., R. 21 W.; then north to the point of beginning; and

Beginning at the northeast corner of sec. 22, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 34, T. 5 N., R. 21 W.; then west to the Colorado River; then north along the Colorado River to the northern side of sec. 21, T. 6 N., R. 22 W.; then east to the point of beginning.

Maricopa County. Beginning at the southeast corner of sec. 36, T. 1 N., R. 1 E.; then west to the southwest corner of sec. 31, T. 1 N., R. 1 E.; then north to the northwest corner of sec. 19, T. 2 N., R. 1 E.; then west to the northeast corner of sec. 20, T. 2 N., R. 1 W.; then south to the southeast corner of sec. 29, T. 2 N., R. 1 W.; then west to the south center of sec. 28, T. 2 N., R. 2 W.; then north to the north center of sec. 33, T. 3 N., R. 2 W.; then east to the northeast corner of sec. 36, T. 3 N., R. 2 W.; then north to the northwest corner of sec. 6, T. 3 N., R. 1 W.; then east to the northeast corner of sec. 1, T. 3 N., R. 1 W.; then south to the northeast corner of sec. 24, T. 3 N., R. 1 W.; then east to

the northeast corner of sec. 24, T. 3 N., R. 1 E.; then south to the point of beginning;

Beginning at the southwest corner of sec. 1, T. 1 S., R. 5 W.; then north along the Hassayampa River to sec. 10, T. 1 N., R. 5 W.; then east to the north center of sec. 16, T. 1 N., R. 4 W.; then south to the southeast corner of sec. 4, T. 1 S., R. 4 W.; then west to the point of beginning; and

Beginning at the southeast corner of sec. 36, T. 2 S., R. 5 E.; then west to the southwest corner of sec. 32, T. 2 S., R. 5 E.; then north to the northwest corner of sec. 20, T. 1 S., R. 5 E.; then east to the northwest corner of sec. 20, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 8, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 12, T. 1 S., R. 6 E.; then south to the southeast corner of sec. 1, T. 2 S., R. 6 E.; then west to the southwest corner of sec. 6, T. 2 S., R. 6 E.; then south to the point of beginning.

Pinal County. Beginning at the southwest corner of sec. 31, T. 5 S., R. 4 E.; then west to the southwest corner of sec. 33, T. 5 S., R. 3 E.; then north to the northwest corner of sec. 33, T. 5 S., R. 3 E.; then west to the southwest corner of sec. 26, T. 5 S., R. 2 E.; then north to the west center of sec. 14, T. 4 S., R. 2 E.; then east to the east center of sec. 14, T. 4 S., R. 3 E.; then south to the northeast corner of sec. 2, T. 5 S., R. 3 E.; then east to the northeast corner of sec. 6, T. 5 S., R. 4 E.; then south to the point of beginning.

* * * * *

Texas

(1) * * *

* * * * *

McCulloch County. Beginning at the McCulloch/San Saba County line and the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the line of longitude −99.134731 W.; then north along the line of longitude −99.134731 W. to the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the McCulloch/San Saba County line; then south along the McCulloch/San Saba County line to the point of beginning.

Mills County. Beginning at the Mills/San Saba County line and the line of latitude 31.310619 N.; then east along the line of latitude 31.310619 N. to the line of longitude −98.743705 W.; then south along the line of longitude −98.743705 W. to the Mills/San Saba County line; then west and north along the Mills/San Saba County line to the point of beginning.

San Saba County. The entire county.

(2) * * *

* * * * *

San Saba County.

40104 3201
40111 2801
40111 3301
40112 1901
40112 1902
40112 1903
40112 2001
40112 2101
40112 3301
40112 3401
40113 2302
40113 2401
40113 2405
40113 2406
40113 3301
40115 0701
40115 1601

(3) *Surveillance areas*.

McCulloch County. Beginning at the McCulloch/San Saba County line and the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the line of longitude −99.134731 W.; then north along the line of longitude −99.134731 W. to the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the McCulloch/San Saba County line; then south along the McCulloch/San Saba County line to the point of beginning.

Mills County. Beginning at the Mills/San Saba County line and the line of latitude 31.310619 N.; then east along the line of latitude 31.310619 N. to the line of longitude −98.743705 W.; then south along the line of longitude −98.743705 W. to the Mills/San Saba County line; then west and north along the Mills/San Saba County line to the point of beginning.

San Saba County. Beginning at the San Saba/Mills County line and the line of longitude −98.743705 W.; then south along the line of longitude −98.743705 W. to the line of latitude 31.167959 N.; then west along the line of latitude 31.167959 N. to the line of longitude −98.903233 W.; then north along the line of longitude −98.903233 W. to the line of latitude 31.310819 N.; then east along the line of latitude 31.310819 N. to the San Saba/Mills County line; then south along the San Saba/Mills County line to the point of beginning; and

Beginning at the San Saba/McCulloch County line and the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the line of longitude −99.063487 W.; then south along the line of longitude −99.063487 W. to the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the San Saba/McCulloch County line; then north along the San Saba/McCulloch County line to the point of beginning.

Done in Washington, DC, this 18th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30784 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV97–931–2 FIR]

Fresh Bartlett Pears Grown in Oregon and Washington; Reduced Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1997–98, and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh Bartlett pears grown in Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period began July 1 and ends June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Order No. 931, both as amended (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, fresh Bartlett pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh Bartlett pears beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the assessment rate established for the Committee for the 1997–98, and subsequent fiscal periods of $0.03 per standard box of fresh Bartlett pears.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of fresh Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 29, 1997, and unanimously recommended 1997–98 expenditures of $111,441 and an assessment rate of $0.03 per standard box of fresh Bartlett pears. In comparison, last year's budgeted expenditures were $89,774. The assessment rate of $0.03 is $0.0075 less than the rate previously in effect. The former rate of $0.0375 would have resulted in a reserve that exceeded the level the Committee believes is necessary to administer the program. The Committee discussed alternatives to this rule, including alternative assessment levels, but decided that an assessment rate of less than $0.03 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears. Applying the $0.03 per standard box rate of assessment to the Committee's 3,150,000 standard box shipment estimate should provide $94,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenditures recommended by the Committee for the 1997–98 year include $48,454 for salaries, $8,187 for office rent, and $4,956 for health insurance. Budgeted expenses for these items in 1996–97 were $46,306, $7,016, and $4,991, respectively.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget was approved by the Department on August 26, 1997, and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,800 producers of fresh Bartlett pears in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of fresh Bartlett pear producers and handlers may be classified as small entities.

This rule continues in effect a decreased assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods. The Committee unanimously recommended 1997–98 expenditures of $111,441 and an assessment rate of $0.03 per standard box of fresh Bartlett pears. The assessment rate of $0.03 is $0.0075 less than the rate previously in effect. Fresh Bartlett pear shipments for the year

were estimated at 3,150,000 standard boxes, which should provide $94,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Committee discussed alternatives to this rule, including alternative expenditure levels. The former rate of $0.0375 would have resulted in a reserve that exceeded the level the Committee believes is necessary to administer the program. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Committee for the 1997–98 fiscal period include $48,454 for salaries, $8,187 for office rent, and $4,956 for health insurance. Budgeted expenses for these items in 1996–97 were $46,306, $7,016, and $4,991, respectively.

Recent price information indicates that the grower price for the 1997–98 season will range between $5.79 and $12.72 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between 0.24 and 0.52 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 29, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large fresh Bartlett pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

The interim final rule published in the **Federal Register** (62 FR 44884) on August 25, 1997, requested comments to be received by September 24, 1997. A copy of the interim final rule was also made available on the Internet by the U.S. Government Printing Office. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 931

Fresh Bartlett pear, Marketing agreements, Reporting and recordkeeping requirements.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 931 which was published at 62 FR 44884 on August 25, 1997, is adopted as a final rule without change.

Dated: November 18, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–30785 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R–0975]

Rules Regarding Availability of Information; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) published in the **Federal Register** of October 20, 1997, a document which amended the Board's Rules Regarding Availability of Information (Rules). This document corrects citation errors within the Rules.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, 202–452–2418, Legal Division. For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD), 202–452–3544, Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board published a document in the **Federal Register** of October 20, 1997, (62 FR 54356). The document (FR Doc. 97–27566) amended the Board's Rules Regarding Availability of Information and contained several incorrect citations. This document also adds an amendatory instruction which will revise citations within subpart C of the Rules to reflect the new renumbering.

In final rule, FR Doc. 97–27566, published on October 20, 1997, (62 FR 54356) make the following corrections:

PART 261—[CORRECTED]

1. On page 54359, in the first column, in the authority citation, line 6, correct ''15 U.S.C. 77uu(b)'' to read ''15 U.S.C. 77uuu(b)''.

§ 261.22 [Corrected]

2. On page 54359, in the first column, add amendatory instruction 3a. to read as follows:

a. Newly designated § 261.22 is amended by:

a. In paragraphs (b)(1) introductory text and (b)(2), the reference ''§§ 261.11 and 261.12'' is removed and ''§§ 261.20 and 261.21'' is added in its place.

b. In paragraph (d), the reference ''§ 261.9'' is removed and ''§ 261.12'' is added each place it appears.

§ 261.1 [Corrected]

3. On page 54359, in the second column, in § 261.1, in paragraph (a)(1), line 22, correct ''the Securities and Exchange Act,'' to read ''the Securities and Exchange Commission Authorization Act,''.

§ 261.12 [Corrected]

4. On page 54362, in the second column, in § 261.12, in paragraph (b)(3), line 7, correct ''§ 261.23(b)(1)(ii)'' to read ''§ 261.22(b)''.

5. On page 54362, in the second column, in § 261.12, paragraph (c)(3), last line, correct ''§ 261.17(h)'' to read ''§ 261.17(f)''.

6. On page 54362, in the second column, in § 261.12, paragraph (c)(4), last line, correct ''§ 261.23(b)'' to read ''§ 261.22(b)''.

§ 261.17 [Corrected]

7. On page 54366, in the first column, in § 261.17, paragraph (f)(4), last line, correct ''§ 261.13(j)'' to read ''§ 261.13(i)''.

By order of the Board of Governors of the Federal Reserve System, November 18, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–30711 Filed 11–21–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 566

[No. 97–116]

RIN 1550–AA77

Liquidity

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule that updates, simplifies, and streamlines its liquidity regulation. This final rule follows a detailed review of the regulation to determine whether it is necessary, imposes the least possible burden consistent with statutory requirements and safety and soundness, and is written in a clear, straightforward manner. Today's final rule is made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

EFFECTIVE DATE: November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Francis Raue, Program Analyst, (202) 906–5750, Robyn Dennis, Manager, Thrift Policy, (202) 906–5751, Supervision Policy, or Susan Miles, Attorney, (202) 906–6798, Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6 of the Home Owners' Loan Act (HOLA) [1] requires savings associations to hold a prescribed amount of statutorily defined liquid assets. The Director of the OTS may, by regulation, vary the amount of the liquidity requirement, but only within pre-established statutory limits. The requirement must be no less than four percent and no greater than ten percent of ''the obligation of the institution on withdrawable accounts and borrowings payable on demand or with unexpired maturities of one year or less.'' [2] The Director may issue regulations defining the terms used in the statute, prescribing or limiting the extent to which certain assets included on the statutory liquidity list may be used to meet the liquidity requirement, and prescribing how to calculate the liquidity requirement.

Regulations implementing the Director's authority under section 6 of the HOLA appear at 12 CFR part 566 (1997). These rules define liquid assets to include cash and certain securities with detailed maturity limitations and marketability requirements.[3] The rules currently impose a liquidity requirement of five percent of an institution's liquidity base and a separate, ''short-term'' liquidity requirement of one percent of that base. The liquidity base in defined as net withdrawable accounts plus short-term borrowings. Except for institutions with less than $25,000,000 in assets, liquidity requirements are based on the ''average daily balance'' of the liquidity base during the preceding month. Institutions with less than $25,000,000 in assets may calculate their liquidity base using month-end figures.

On May 14, 1997, the OTS published a notice of proposed rulemaking (NPR) seeking comment on its liquidity regulation.[4] The OTS sought to reduce the burden of compliance with the statutory liquidity requirement to the maximum extent possible, consistent with statutory requirements and safety and soundness considerations. Specifically, the OTS proposed to: (1) reduce the liquidity requirement from five percent of net withdrawable accounts and short-term borrowings to four percent; (2) remove the one percent short-term liquidity requirement; (3) set forth an explicit requirement that thrifts maintain a safe and sound level of liquidity; (4) streamline the calculations used to measure compliance with the liquidity requirement; (5) expand the categories of liquid assets that may count toward satisfying a savings association's liquidity requirement; and (6) reduce the liquidity base by excluding withdrawable accounts payable in more than one year form the definition of the term ''net withdrawable accounts.''

II. Summary of Comments and Description of the Final Rule

The public comment period on the proposed rule closed on July 14, 1997. The OTS received twelve comments on its proposal. Commenters included eight savings associations, two trade associations, one holding company, and one individual. Commenters generally concurred that the statutory liquidity requirement imposes an unnecessary burden on institutions and no longer serves any useful purpose. Seven commenters specifically urged the OTS to continue to seek legislation that would eliminate this requirement. Two of these commenters urged the elimination of the requirement for institutions rated 1 or 2 under the CAMELS system.

Eleven commenters supported the proposed rule. These commenters generally concluded that the proposed rule would reduce the regulatory burden to the extent permitted by the statute, while maintaining the safety and soundness of institutions. Several commenters suggested revisions to the proposed rule which are discussed below. One commenter opposed the proposed rule.

Today's final rule is substantially similar to the May proposal, but incorporates several changes and clarifications in response to comments received. Specific comments are discussed where appropriate in the analysis below.

A. Reducing the Liquid Asset Requirement From Five to Four Percent and Removing the One Percent Short-Term Requirement

The OTS proposed to reduce the liquid asset requirement from five percent of the liquidity base to four percent, the lowest percentage permissible by statute. Additionally, the OTS proposed to eliminate the one percent short-term liquidity requirement, which is not mandated by statute. The agency believed that these changes were consistent with safety and soundness and the goal of reducing unnecessary burdens on the industry.

Commenters generally supported the reduction of the liquid asset requirement and the elimination of the short term liquidity requirement. One commenter noted that the OTS would retain sufficient flexibility through its examination process to determine the proper amount of liquid assets to support safe and sound operations. One commenter expressed general concern about this change, but did not cite specific reasons for its concern. These changes are adopted as proposed.

B. Adding a General Safety and Soundness Requirement

The OTS proposed to incorporate a general requirement that a savings

[1] 12 U.S.C. 1465.

[2] 12 U.S.C. 1465(b)(2).

[3] 12 CFR 566.1(g) (1997).

[4] 62 FR 26449.

association must maintain sufficient liquidity to ensure its safe and sound operation. This requirement reflects the OTS's position that the statutory requirement is not necessarily indicative of a safe level of liquidity. The OTS would determine the adequacy of an institution's liquidity on a case-by-case basis.

Most commenters agreed that it is appropriate to determine liquidity requirements based on factors unique to each association, and supported this proposed requirement. One commenter, however, opposed the general safety and soundness requirement, suggesting that the proposed rule was vague. The OTS disagrees. The ''safe and sound operation'' standard is commonly used in banking parlance and in OTS regulations.[5] Safety and soundness determinations are generally made on a case-by-case basis in light of the particular circumstances of each institution. In the context of liquidity, a thrift is generally required to ensure that its current and prospective sources of liquidity are sufficient to permit it to meet its obligations in a timely manner and to fulfill the legitimate banking needs of its community.[6]

One commenter encouraged the OTS to consider latent sources of liquidity when determining whether an association is maintaining sufficient liquidity for safety and soundness purposes. When OTS evaluates an institution's liquidity, examiners consider additional sources of liquidity, not only those assets that meet the regulatory definition of liquid assets. Examiners consider the institution's visible liquidity position (*i.e.*, liquid assets such as cash and marketable securities) and the institution's invisible liquidity position (*i.e.*, available borrowing capacity).[7]

C. Streamlining the Average Balance Calculations of Liquid Assets and Liquidity Base

The current rule requires each savings association (except certain small associations and mutual savings banks) to calculate monthly average daily balances of liquid assets and the liquidity base. Thus, a savings association must calculate liquid assets and the liquidity base at the close of each business day, and then compute the average daily balance of the liquid assets and liquidity base for each month.

The proposal would streamline these calculations. While an institution would be required to continually satisfy the liquidity requirement, it would be required to calculate the liquidity base only on the last day of the preceding calendar quarter. This change would eliminate the need to calculate the average daily balance of the liquidity base for each month.

Commenters generally supported the proposed change to the liquidity base calculation as less burdensome, but suggested certain clarifications and modifications to further reduce the burden of compliance. For example, one commenter noted that it may be difficult or burdensome for some institutions to make the change to the new liquidity base calculation. The OTS goal is to decrease, rather than increase, regulatory burden connected with the statutory liquidity calculation. Accordingly, the final rule permits institutions to choose to use either the current or new method as set forth in the proposal of calculating the liquidity base.

Several commenters asked OTS to clarify how the liquid *asset* amount is to be calculated. For example, commenters asked whether liquid assets would be based on the actual balance at the end of each business day, the end of each calendar month, or the end of each quarter, and whether liquid assets would be based on the average daily balance for each month or quarter.

The final rule does not require a savings association to hold the required amount of liquid assets every day. Such a requirement would increase, rather than decrease, the regulatory burden imposed on institutions under the current regulation. Conversely, while a requirement that a savings association must hold the required amount of liquid assets only on one day during a quarter or month would reduce regulatory burden, such a requirement would, in effect, nullify the statutory liquidity requirement, and would be contrary to the statutory directive that liquid assets be maintained at a level specified by the Director.[8] Accordingly, the final rule continues to require savings associations to calculate liquid assets based on an average daily balance over a period of time. However, instead of determining the average daily balance for each month, a savings association will now determine the average daily balance for each quarter.

Under the final rule, a savings association may choose to calculate its liquidity ratio in one of two ways. It can maintain an average daily balance of liquid assets in each calendar quarter of not less than four percent of either: (1) its liquidity base at the end of the preceding quarter, or (2) the average daily balance of its liquidity base during the preceding quarter. The method of calculating the average daily balances for a period would be unchanged under the final rule.

D. Expanding the Categories of Liquid Assets That Count Toward Satisfaction of the Liquidity Requirement

Under sections 6(b)(1)(C) (vi) and (vii) of the HOLA,[9] as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),[10] certain mortgage-related securities and mortgage loans qualify as liquid assets to the extent approved by the Director of the OTS. The first category consists of mortgage-related securities that are defined in section 3(a)(41) of the Securities Exchange Act of 1934. The second category consists of mortgage loans on the security of a first lien on residential real property, if the mortgage loans qualify as backing for mortgage-backed securities issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) or are guaranteed by the Government National Mortgage Association (GNMA). The qualifying mortgage-related securities and mortgage loans must have one year or less remaining until maturity, or be subject to an agreement (including a repurchase agreement, put option, right of redemption, or takeout commitment) that requires another person to purchase the securities within a period that does not exceed one year. In addition, the person that agrees to purchase the securities must be an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934.

The OTS proposed to add the FIRREA categories to the definition of liquid assets. Commenters generally supported the addition of these new categories. Accordingly, these new categories are added in the final rule.

The proposed rule text described the specific requirements for loans and mortgage-related securities with cross-references to other regulations and statutes. One commenter argued that the cross-references are different to

[5] *See* 12 CFR 559.1, 560.1, 562.2, and 563.161 (1997).

[6] For additional guidance, savings associations should refer to the Thrift Activities Handbook, Liquidity-Asset/Liability Management, Chapter 500.

[7] *See* Section 530, Cash Flow and Liquidity Management, Thrift Activities Handbook.

[8] *See* 12 U.S.C. 1465(b)(1).

[9] 12 U.S.C. 1465(b)(1)(C)(vi), (vii).

[10] Pub. L. 101–73, 103 Stat. 183, 313–314 (1989).

understand and urged the OTS to restate all applicable requirements in the rule text. The statutes and regulations cross-referenced by the proposed rule are rather lengthy. The OTS believes that the benefit of having a concise rule outweighs the inconvenience of having to look to the HOLA, the statute governing most savings association activities. Consequently, the cross-references are retained.

Another commenter recommended that the OTS should also include, in the definition of liquid assets, adjustable rate mortgage-backed securities issued by the FNMA, the FHLMC, or the GNMA. This commenter pointed out that the definition of liquid assets in the regulation suggests that an asset's final maturity always has a link to its price sensitivity or liquidity. The commenter noted that over the years the more common types of adjustable rate mortgage-backed securities have developed significant secondary market liquidity, and have price sensitivities that are lower than many of the currently qualifying liquid asset alternatives.

Section 6(b)(1) of the HOLA describes the specific types of assets that the OTS may consider to be liquid assets. The statutory listing includes ''such obligations, including such special obligations, of the United States, a State, any territory or possession of the United States, or a political subdivision, agency or instrumentality of any one or more of the foregoing, and bankers' acceptances, as the Director may approve.'' [11] The OTS, and its predecessor, the Federal Home Loan Bank Board (FHLBB), have long included obligations of FNMA, GNMA, and FHLMC among such special obligations.[12] While section 6(b)(1)(c)(ii) of the HOLA does not contain any maturity requirement for such obligations, the current OTS regulation provides that, in order to qualify as a liquid asset, such obligations must have five years or less remaining until maturity. The ostensible basis for the imposition of these liquidity requirements was to reduce the risk of loss on the securities held as liquid assets.[13]

Upon review, the OTS believes that the maximum five-year maturity requirement for these specific obligations under § 566.1(g)(3) and the related maturity requirement for obligations of the United States under § 566.1(g)(2) are outdated and unnecessary.[14] In addition, we note that the other federal banking agencies do not impose, for liquidity purposes, a five-year maturity requirement for obligations. The continuing imposition of this requirement is contrary to our objectives of relieving unnecessary burden on the industry, and is consistent with the treatment of these assets by the other federal banking regulators in their safety and soundness examinations. Therefore, the OTS has removed the maturity requirement for these obligations.

E. Excluding Accounts With Unexpired Maturities Exceeding One Year From the Definition of ''Net Withdrawable Accounts''

A savings association must maintain liquid assets of not less than a stated percentage of the amount of its liquidity base. The regulation defines ''liquidity base'' as net withdrawable accounts plus short term borrowings.[15] It defines ''net withdrawable accounts'' as all withdrawable accounts less the unpaid balance of all loans secured by such accounts with certain exclusions.[16] ''Short term borrowings'' is defined as borrowings where any portion of the principal is payable on demand or in one year or less.[17]

The OTS proposed to redefine ''net withdrawable accounts'' by excluding accounts with unexpired maturities exceeding one year and by deleting the word ''all'' from the phrase ''all withdrawable accounts'' in the first part of the definition. These changes would reduce a savings association's liquidity base which would reduce the association's liquid asset requirement.

Three commenters addressed this change. One commenter observed that this change is consistent with the regulation's current exclusion from the liquidity base of borrowings payable in more than one year. The commenter also noted that the statute does not specify different maturity requirements for withdrawable accounts and borrowings in the liquidity base.

Another commenter agreed with the proposed exclusion, provided that excluded accounts with maturities of more than one year are subject to an effective early withdrawal penalty. The OTS has decided not to impose an early withdrawal penalty requirement for excluded accounts with maturities of more than one year. Such a requirement is unnecessary and would place an additional burden on savings associations, which is contrary to the spirit of this rulemaking.

Two commenters noted that associations would have to create new reports in order to exclude deposits with unexpired maturities exceeding one year from their liquidity bases. These commenters requested that the final rule explicitly permit institutions to elect to use either the proposed or the current, more stringent, method of calculating the liquidity base.

The OTS agrees. Accordingly, the final rule provides a savings association with the option to exclude deposits with unexpired maturities exceeding one year from its liquidity base as proposed, or to continue to use the more stringent method of calculating the liquidity base. To implement this change, the OTS has amended the current definition of net withdrawable accounts to give institutions the option of either applying the current definition of net withdrawable accounts or excluding withdrawable account deposits with maturities exceeding one year from the computation of net withdrawable accounts.

F. Technical Revisions

The OTS has made several technical revisions to § 566.1. These revisions include appropriate cross-references in paragraph (g)(8) to new paragraphs (g)(12) and (g)(13) and punctuation and other minor changes throughout paragraph (g).

III. Paperwork Reduction Act

The recordkeeping requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1550–0011.

Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the OTS, 1700 G Street, NW., Washington, DC 20552.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at 12 CFR 506.1(b).

The recordkeeping requirements contained in this final rule are found at 12 CFR 566.4 (1997). The information is needed by the OTS in order to ensure that associations comply with a

[11] 12 U.S.C. 1465(b)(1)(c)(ii).

[12] *See* 12 CFR 566.1(g)(3) (1997).

[13] *See* 39 FR 41263 (November 26, 1974).

[14] We note that the agency has adjusted this maturity requirement in the past. *See* 39 FR 17219 (May 14, 1974).

[15] 12 CFR 566.1(c) (1997).

[16] 12 CFR 566.1(d) (1997).

[17] 12 CFR 566.1(e) (1997).

statutory liquidity requirement. The likely recordkeepers are OTS-regulated savings associations. Records are to be maintained in accordance with basic business practices, but not less than a period of three years.

IV. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), the OTS certifies that this regulation will not have a significant economic impact on a substantial number of small entities. It reduces the liquidity requirement from five percent to four percent, which should increase all savings associations' abilities to manage their assets. Additionally, the final regulation should ease the administrative burden of calculating compliance with liquidity requirements for all savings associations, including small savings associations.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule reduces regulatory burden. The OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more.

Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VII. Effective Date

Section 302 of the CDRIA requires that regulations that impose additional reporting, disclosure, or other new requirements take effect on the first day of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulations should become effective before that date. The OTS believes that CDRIA does not apply because this final rule imposes no new burden on thrifts. Further, the OTS believes that an immediate effective date is appropriate since the final rule relieves regulatory burden on savings associations. An immediate effective date would permit savings associations to better manage their assets by reducing the liquidity requirement from five to four percent and by eliminating the short-term liquidity requirement. Additionally, the final rule should ease administrative burden of computing compliance with liquidity requirements. For these reasons, the OTS believes that an immediate effective date is appropriate for this final rule.

Section 553(d) of the Administrative Procedure Act requires an agency to publish a substantive rule at least 30 days before its effective date. Section 553(d) of the APA permits waiver of the 30-day delayed effective date requirement for, *inter alia*, good cause or where a rule relieves a restriction. The OTS further finds that the 30-day delayed effective date requirement may be waived because this final rule relieves regulatory restrictions.

List of Subjects in 12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby amends part 566, chapter V, title 12, Code of Federal Regulations, as set forth below:

PART 566—LIQUIDITY

1. The authority citation for part 566 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1465, 1467a; 15 U.S.C. 1691, 1691a.

2. Section 566.1 is amended by:

a. Revising paragraph (d);

b. Revising paragraph (g)(2);

c. Revising paragraph (g)(3) introductory text;

d. Revising paragraphs (g)(4)(i)(A) and (g)(4)(i)(B);

e. Revising paragraphs (g)(8), (g)(9) and (g)(10);

f. In paragraph (g)(11)(i), removing ''(''Association member'').'' and adding ''(''Association member'') or'' in its place;

g. In paragraph (g)(11), removing the period at the end of the concluding text and adding a semicolon in its place;

h. Adding paragraphs (g)(12) and (g)(13); and

i. Removing paragraph (h).

The additions and revisions read as follows:

§ 566.1 Definitions.

* * * * *

(d) *Net withdrawable accounts.* The term *net withdrawable accounts* means withdrawable accounts less the unpaid balance of loans secured by such accounts. In computing net withdrawable accounts, a savings association may, at its option, exclude withdrawable accounts maturing in more than one year. Tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to any applicable regulations, U.S. Treasury General Accounts, and U.S. Time Deposit Accounts are not withdrawable accounts.

* * * * *

(g) * * *

(2) Except as the Office may otherwise direct in a specific case, obligations of the United States;

(3) Obligations issued or fully guaranteed as to principal and interest, by:

* * * * *

(4) * * *

(i) * * *

(A) Negotiable and will mature in one year or less;

(B) Not negotiable and will mature in 90 days or less; or

* * * * *

(8) Shares or certificates in any open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders, to investments described in the other provisions of paragraphs (g)(1) through (g)(7), (g)(9), (g)(12), and (g)(13) of this section;

(9) Corporate debt obligations and commercial paper denominated in dollars, Provided, That:

(i) Such corporate debt obligations:

(A) Continue to be rated in one of the four highest categories by the most recently published rating of such obligations by a nationally recognized investment rating service;

(B) Are marketable as defined by § 541.7 of this chapter;

(C) Will mature in three years or less; and

(D) Are not convertible to common stock;

(ii) Such commercial paper:

(A) Continues to be rated in one of the two highest categories by the most recently published rating of such paper by two nationally recognized investment rating services, or, if unrated, is guaranteed by a company having outstanding paper that is so rated; and

(B) Will mature in 270 days or less; and

(iii) An amount not in excess of one percent of such institution's assets invested in eligible corporate debt obligations or commercial paper of a single issuer shall be counted as a liquid asset;

(10) Reserves required to be maintained pursuant to title I of the Depository Institution Deregulation and Monetary Control Act of 1980 (94 Stat. 132) and established pursuant to 12 CFR part 204, whether in the form of:

(i) Vault cash, as defined in 12 CFR 204.2, provided that vault cash shall be included only once in calculating the aggregate amount of liquid assets;

(ii) Balances maintained directly with the Federal Reserve Bank in the district in which the savings association is located; or

(iii) A pass through account as defined in 12 CFR 204.2;

* * * * *

(12) Mortgage-related securities as described in 12 U.S.C. 1465(b)(1)(C)(vi); and

(13) Mortgage loans on the security of a first lien on residential real property as described in 12 U.S.C. 1465(b)(1)(C)(vii).

3. Section 566.2 is revised to read as follows:

§ 566.2 Requirements.

(a) *Safety and soundness requirement.* In addition to meeting the minimum requirement under paragraph (b) of this section, each saving association must maintain sufficient liquidity to ensure its safe and sound operation.

(b) *Minimum statutory liquidity requirement.* (1) Except as otherwise provided in paragraph (c) of this section, each savings association shall maintain an average daily balance of liquid assets in each calendar quarter of not less than 4 percent of:

(i) The amount of its liquidity base at the end of the preceding calendar quarter; or

(ii) The average daily balance of its liquidity base during the preceding quarter.

(2) The average daily balance of either liquid assets or liquidity base in a quarter is calculated by adding the respective balance as of the close of each business day in a quarter, and for any non-business day, as of the close of the nearest preceding business day, and dividing the total by the number of days in the quarter.

(c) *Reduction and suspension of liquidity requirements.* The Office may, to the extent and under conditions it may prescribe, permit a savings association to reduce its liquid assets below the minimum amount required by paragraph (b) of this section to meet withdrawals or pay obligations. The Office may suspend part or all of the liquidity requirements of paragraph (b) of this section whenever it determines that conditions of national emergency or unusual economic stress exist. Any such suspension, unless sooner terminated by its terms or by the Office, shall terminate after 90 days, but the Office may again suspend part or all of such requirement at any time.

Dated: November 13, 1997.

By the Office of Thrift Supervision.

Ellen S. Seidman,

Director.

[FR Doc. 97–30431 Filed 11–21–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–46–AD; Amendment 39–10214; AD 97–24–07]

RIN 2120–AA64

Airworthiness Directives; Jetstream Aircraft Limited Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes that have kit JK 2496 and modification JM 7537 installed. This action requires installing magnetic latching relays on the ignition system because of the auto-ignition system becoming disabled when switching from ground power to the airplane's internal power. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to prevent loss of the airplane's internal power connection to the auto-ignition system, which could cause loss of engine power and possible loss of control of the airplane.

DATES: Effective December 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 31, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; telephone (0292) 79888; facsimile (0292) 79703. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 92–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106; telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Jetstream Models 3101 and 3201 airplanes, serial numbers 693 through 870, that have kit JK 2496 and modification JM 7537 installed and are registered in the United States, was published in the **Federal Register** on April 14, 1997 (62 FR 18062). The action proposed to require installing magnetically latching relays with wiring changes.

Accomplishment of the installation would be in accordance with Jetstream Service Bulletin No. 74–JM 7693A, Original Issue dated May 17, 1990; Revision No. 3 dated January 28, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 126 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 9 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. The

manufacturer is providing the parts at no charge. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $68,040 or $540 per airplane.

Jetstream has informed the FAA it has received approximately 78 orders for the parts to accomplish this action. If each set of parts is installed on an affected airplane, the estimated cost to the owners/operators in the U.S. will be reduced from 68,040 to $25,920.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–24–07 Jetstream Aircraft Limited: Amendment 39–10214; Docket No. 92–CE–46–AD.

Applicability: Model 3101 and 3201 airplanes, serial numbers 693 through 870, certificated in any category, that have kit JK 2496 and modification JM 7537 installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of the airplane's internal power connection to the auto-ignition system, which could cause loss of engine power and possible loss of the airplane, accomplish the following:

(a) Install magnetically latching relays with wiring changes (quantity 2) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) No. 74–JM 7693A, Original Issue dated May 17, 1990; Revision 3, dated January 28, 1993.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Small Airplane Directorate.

(d) The installation required by this AD shall be done in accordance with BAe JETSTREAM Service Bulletin No. 74–JM 7693A, ORIGINAL ISSUE: May 17, 1990; REVISION NO. 3, dated January 28, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this document may be obtained from Jetstream Aircraft Limited, Prestwick Airport, Ayrshire, KA9 2RW, Scotland, or may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD addresses the United Kingdom's Civil Airworthiness Authority Mandatory BAe JETSTREAM Service Bulletin No. 74–JM 7693A, ORIGINAL ISSUE: May 17, 1990; REVISION NO. 3, dated January 28, 1993.

(e) This amendment (39–10214) becomes effective on December 31, 1997.

Issued in Kansas City, Missouri, on November 14, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30712 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–34–AD; Amendment 39–10212; AD 97–24–05]

RIN 2120–AA64

Airworthiness Directives; Aerospace Technologies of Australia Pty Ltd. (Formerly Government Aircraft Factory) Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Aerospace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N22S, and N24A airplanes. This AD requires repetitively inspecting the aft wing break connectors for arcing damage, deposits between contacts, and looseness of contacts; and removing deposits between contacts, tightening any loose contacts, and replacing any aft wing break connectors with arcing damage. This AD results from several reports of uncommanded flap extensions and displays of incorrect stall warning indications on the affected airplanes. The actions specified by this AD are intended to prevent contamination in the aft wing break connectors, which could result in uncommanded flap extensions and incorrect stall warning indications with consequent loss of airplane control.

DATES: Effective January 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of January 6, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all ASTA Models N22B, N22S, and N24A airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 18, 1997 (62 FR 43596). The NPRM proposed to require repetitively inspecting the aft wing break connectors for arcing damage, deposits between contacts, and looseness of contacts; and removing deposits between contacts, tightening any loose contacts, and replacing any aft wing break connectors with arcing damage. Accomplishment of the proposed actions would be in accordance with Nomad Alert Service Bulletin ANMD–57–13, dated October 30, 1995.

This NPRM resulted from several reports of uncommanded flap extensions and displays of incorrect stall warning indications on the affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $900 or $60 per airplane. This figure does not take into account the cost of repetitive inspections or the cost to replace any damaged aft wing break connectors. The FAA has no way of determining the number of repetitive inspections each operator would incur over the life of each affected airplane or the number of aft wing break connectors that may be found damaged during the inspections required by this action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–24–05 Aerospace Technologies of Australia PTY LTD: Amendment 39–10212; Docket No. 97–CE–34–AD.

Applicability: Models N22B, N22S, and N24A airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent contamination in the aft wing break connectors, which could result in uncommanded flap extensions and incorrect stall warning indications with consequent loss of airplane control, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 300 hours TIS, inspect the aft wing break connectors for arcing damage, deposits between contacts, and looseness of contacts. Accomplish these inspections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Nomad Alert Service Bulletin ANMD–57–13, dated October 30, 1995.

(b) If any deposits between contacts, loose contacts, or aft wing break connector arcing damage is found, prior to further flight, accomplish the following, as applicable, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Nomad Alert Service Bulletin ANMD–57–13, dated October 30, 1995:

(1) Remove any deposits between contacts;

(2) Tighten any loose contacts; and

(3) Replace any aft wing break connectors with arcing damage.

(c) The repetitive inspections specified in this AD are required even if deposit is removed between the aft wing break connector contacts; any aft wing break connector contacts are tightened; or any aft wing break connectors are replaced.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) The inspections, removal, tightening, and replacement required by this AD shall be done in accordance with Nomad Alert Service Bulletin ANMD–57–13, dated October 30, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–10212) becomes effective on January 8, 1998.

Issued in Kansas City, Missouri, on November 14, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30719 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–22]

Revision of Class D and E Airspace: McKinney, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment modifies the Class D and Class E airspace at McKinney, TX. The development of a planned Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP's) at McKinney Municipal Airport, McKinney, TX, has made this rule necessary. This action is intended to provide adequate additional controlled airspace for aircraft operating under Instrument Flight Rules (IFR) in the vicinity of McKinney Municipal Airport, McKinney, TX.

DATES: Effective: 0901 UTC, February 26, 1998. Comment Date: Comments must be received on or before January 8, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–22, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 amends the Class D and Class E airspace at McKinney Municipal Airport, McKinney, TX. The development of GPS SIAPs to RWYs 13 and 17 at McKinney Municipal Airport, McKinney, TX, has made this action necessary. The intended effect of this action is to provide additional controlled airspace for aircraft operating under Instrument Flight Rules (IFR) in the vicinity of McKinney Municipal Airport, TX.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ASW–22.'' The postcard

will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points,* dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000: Class D airspace areas

* * * * *

ASW TX D McKinney, TX [Revised]

McKinney, McKinney Municipal Airport, TX
(Lat. 33°10′50″N., long. 96°35′26″W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.2-mile radius of the McKinney Municipal Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continually published in the Airport/Facility Directory.

* * * * *

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Dallas-Forth Worth, TX [Revised]

Dallas/Fort Worth International Airport, TX
(Lat. 32°53′49″N., long. 97°02′33″W.)
McKinney Municipal, TX
(Lat. 33°10′50″N., long. 96°35′26″W.)
Rockwall Municipal Airport, TX
(Lat. 32°55′50″N., long. 96°26′08″W.)
Blue Ridge VORTAC
(Lat. 33°17′00″N., long. 96°21′54″W.)
Mesquite, Phil L. Hudson Municipal Airport, TX
(Lat. 32°44′49″N., long. 96°31′50″W.)
Mesquite RBN
(Lat. 32°48′33″N., long. 96°31′44″W.)
Phil L. Hudson ILS Localizer
(Lat. 32°44′21″N., long. 96°31′50″W.)
Lancaster Airport, TX
(Lat. 32°34′45″N., long. 96°43′09″W.)
Lancaster RBN
(Lat. 32°34′40″N., long. 96°43′19″W.)
Dallas/Fort Worth VORTAC
(Lat. 32°51′57″N., long. 97°01′41″W.)
Fort Worth Spinks Airport, TX
(Lat. 32°33′55″N., long. 97°18′30″W.)
Cleburne Municipal Airport, TX
(Lat. 32°21′17″N., long. 97°26′03″W.)
Bourland Field, TX
(Lat. 32°34′47″N., long. 97°35′34″W.)
Acton VORTAC
(Lat. 32°26′05″N., long. 97°39′50″W.)
Granbury Municipal Airport, TX
(Lat. 32°26′40″N., long. 97°49′01″W.)
Weatherford, Parker County Airport, TX
(Lat. 32°44′47″N., long. 97°40′57″W.)
Bridgeport Municipal Airport, TX
(Lat. 33°10′29″N., long. 97°49′42″W.)
Bridgeport VORTAC
(Lat. 33°14′16″N., long. 97°45′59″W.)
Decatur Municipal Airport, TX
(Lat. 33°15′17″N., long. 97°34′50″W.)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas/Fort Worth International Airport and within a 6.6-mile radius of McKinney Municipal Airport and within 1.1 miles each side of the 002° bearing from the McKinney Municipal Airport extending from the 6.6-mile radius to 9.2 miles north of the airport and within a 6.3-mile radius of Rockwall Municipal Airport and within 1.6 miles of the 190° radial of the Blue Ridge VORTAC extending from the 6.3-mile radius to 10.8 miles north of the airport and within a 6.5-mile radius of Phil L. Hudson Airport and within 8 miles east and 4 miles west of the 001° bearing from the Mesquite RBN extending from the 6.5-mile radius to 19.7 miles north of the airport and within 1.7 miles each side of Phil L. Hudson ILS Localizer south course extending from the 6.5-mile radius to 11.1 miles south of the airport and within a 6.5-mile radius of the Lancaster Airport and within 8 miles west and 4 miles east of the 129° bearing from the Lancaster RBN extending from the 6.5-mile radius to 16 miles southeast of the RBN and within 8 miles northeast and 4 miles southwest of the 144° radial of the Dallas/Fort Worth VORTAC extending from the 30-mile radius of Dallas/Fort Worth International Airport to 35 miles southeast of the VORTAC and within 6.5-mile radius of Fort Worth Spinks Airport and within 8 miles east and 4 miles west of the 178° bearing from the airport extending from the 6.5-mile radius to 21 miles south of the airport and within a 6.9-mile radius of Cleburne Municipal Airport and within 3.6 miles each side of the 112° radial of the Acton VORTAC extending from the 6.9-mile radius of the Cleburne Municipal Airport to 12.2 miles northwest of the airport and within a 6.5-mile radius of Bourland Field and within a 6.3-mile radius of Granbury Municipal Airport and within a 6.3-mile radius of Parker County Airport and within 8 miles east and 4 miles west of the 357° radial of the Acton VORTAC extending from the 6.3-mile radius to 21.4 miles south of the airport and within a 6.3-mile radius of Bridgeport Municipal Airport and within 1.6 miles each side of the 220° and 040° radials of the Bridgeport VORTAC extending from the 6.3-mile radius to 10.6 miles northeast of the airport and within a 6.3-mile radius of Decatur Municipal Airport and within 1.5 miles each side of the 083° radial of the Bridgeport VORTAC extending from the 6.3-mile radius to 9.2 miles west of the airport.

* * * * *

Issued in Fort Worth, TX, on November 10, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–30776 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–28]

Revision of Class E Airspace; New Mexico, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace extending upward from 1,200 feet above ground level (AGL) within

Restricted Area R–5107B and the portion of Restricted Area R–5107A north of latitude 32°18′00″N., located in south/central New Mexico. These White Sands Missile Range restricted areas are currently Class G airspace and are excluded from the Class E airspace extending upward from 1,200 feet AGL within the boundary of the state of New Mexico. This action is intended to provide adequate controlled airspace for aircraft operating within the confines of Restricted Area R–5107B and that portion of Restricted Area R–5107A north of latitude 32°18′00″N., White Sands Missile Range, New Mexico, NM.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On March 26, 1997, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace within Restricted Area R–5107B, and the portion of Restricted Area R–5107A north of latitude 32°18′00″N., New Mexico, NM, was published in the **Federal Register** (62 FR 14375). The ability of White Sands to provide IFR services within the confines of these restricted areas made the proposal necessary. The proposal was to establish adequate controlled airspace for aircraft operating within Restricted Area R–5107B, and the portion of Restricted Area R–5107A north of latitude 32°18′00″N., New Mexico, NM.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace to provide controlled airspace for aircraft operating within Restricted Area R–5107B and within the portion of Restricted Area R–5107A north of latitude 32°18′00″N.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW NM E5 New Mexico, NM [Revised]

Albuquerque VORTAC
(Lat. 35°02′38″N., long. 106°48′59″W.)

That airspace extending upward from 1,200 feet above the surface within the boundary of the State of New Mexico, excluding that airspace north of a line beginning on the Arizona/New Mexico state line at lat. 35°31′00″N., to lat. 35°52′00″N., long. 108°47′02″W.; to lat. 35°47′30″N., long. 108°34′02″W.; thence along long. 108°34′02″W.; to and along the north boundary of V–62 to and clockwise along the arc of a 40-mile radius circle centered at the Albuquerque VORTAC to lat. 35°37′35″N., long. 106°24′50″W.; to lat. 35°47′00″N., long. 106°15′02″W.; to lat. 35°47′00″N., long. 106°12′32″W.; to lat. 36°05′35″N., long. 106°09′52″W.; to lat. 36°03′40″N., long. 105°52′22″W.; to lat. 35°47′00″N., long. 105°54′42″W.; to lat. 35°47′00″N., long. 105°50′02″W.; thence along long. 105°50′02″W.; to and along the north boundary of V–19 to long. 105°16′32″W.; to lat. 36°00′00″N., long. 105°07′02″W.; thence along lat. 36°00′00″N., to and along the north boundary of V–190 to the New Mexico/Texas state line, excluding Restricted Area R–5101, excluding that airspace bounded by a line beginning on the Arizona/New Mexico state line at lat. 34°18′00″N., thence to the south boundary of V–264 at long. 108°54′02″W.; thence along the south boundary of V–264 to and south along long. 107°00′02″W.; to and along the northwest boundary of V–19 to lat. 33°35′00″N., to lat. 33°35′00″N., long. 107°20′02″W., to the northwest boundary of V–202 at long. 107°25′02″W.; thence along the northwest boundary of V–202 to lat. 32°59′00″N., to lat. 32°35′00″N., long. 108°37′02″W., to the Arizona/New Mexico state line at lat. 32°25′00″N., thence along the state line to the point of beginning, excluding that airspace south of V–66.

* * * * *

Issued in Fort Worth, TX, on November 14, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–30774 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8739]

RIN 1545–AV09

IRS Adoption Taxpayer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 6109 relating to taxpayer identifying numbers. The final regulations include a cross reference to the temporary regulations, which provide rules for obtaining and using IRS adoption taxpayer identification numbers. The temporary regulations assist individuals who are in the process of adopting children and wish to claim certain tax benefits with respect to those children. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in

the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Michael L. Gompertz, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These final and temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1564. Responses to this collection of information are required to obtain a taxpayer identification number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to identifying numbers under section 6109. Section 6109(a)(1) provides that any person required to make a return, statement, or other document must include in the document such identifying number as may be prescribed for securing proper identification of the person. Section 6109(a)(2) provides that any person with respect to whom a return, statement, or other document is required to be made by another person or whose identifying number must be shown on a return of another person, must furnish to the other person such identifying number as may be prescribed for securing the person's proper identification. Section 6109(d) provides that an individual must use a social security number as the individual's taxpayer identification number unless the Secretary prescribes otherwise by regulations.

Currently, there are three types of taxpayer identification numbers (TINs) assigned to individuals: (1) a social security number (SSN), (2) an IRS individual taxpayer identification number (ITIN) assigned to an alien individual who is ineligible to obtain an SSN, and (3) an employer identification number (EIN) assigned to an individual who is engaged in a trade or business as a sole proprietor. An SSN is assigned by the Social Security Administration. An ITIN or an EIN is assigned by the IRS.

Section 1615 of the Small Business Job Protection Act of 1996 (Public Law 104–188, 110 Stat. 1755, 1853 (1996)) added sections 21(e)(10) and 151(e) to deny the dependent care credit and the deduction for the dependency exemption if the TIN (as defined by section 6109 and the regulations thereunder) of the dependent is not included on the return claiming the credit or deduction. Sections 21(e)(10) and 151(e) generally are effective for tax returns due (without regard to extensions) after September 18, 1996.

In addition, section 101 of the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 788, 796 (1997)) added section 24 to the Code to provide a child tax credit for each qualifying child, effective for taxable years beginning after December 31, 1997. Pursuant to section 24(e), the taxpayer will be denied the credit if the qualifying child's TIN is not included on the return claiming the credit.

In most cases, taxpayers can meet the TIN requirements of sections 21, 24, and 151 by including a child's SSN on the return claiming the credit or deduction. In the case of adoption, however, a child may not have an SSN or, if the child does have an SSN, the taxpayer adopting the child (the prospective adoptive parent) may be unable to obtain the SSN because of confidentiality laws. See H.R. Rep. No. 542, 104th Cong., 2d Sess. 20 (1996); S. Rep. No. 412, 103d Cong., 2d Sess. 163 (1994).

Explanation of Provisions

These temporary regulations authorize the IRS to assign a new form of taxpayer identification number, the IRS adoption taxpayer identification number (ATIN), to a child who is in the process of being adopted (a prospective adoptive child). The regulations are effective for income tax returns due (without regard to extension) on or after April 15, 1998.

The temporary regulations provide that an ATIN is a temporary taxpayer identification number that expires two years after the date of issuance. However, upon application, the IRS may grant an extension of the ATIN. A prospective adoptive parent may apply for an ATIN for a child if: (1) The prospective adoptive parent is eligible to claim a personal exemption under section 151 with respect to the child; (2) the child is placed with the prospective adoptive parent for legal adoption by an authorized placement agency (as defined in § 1.152–2(c)); (3) the Social Security Administration will not assign the prospective adoptive parent an SSN for the child (for example, because the adoption is not final); and (4) the prospective adoptive parent has used all reasonable means to obtain the child's assigned SSN, if any, but has been unsuccessful in obtaining this number (for example, because the birth parent who obtained the number is not legally required to disclose the number to the prospective adoptive parent).

The temporary regulations provide that an application for an ATIN must be made on the Form W–7A, *Application for Taxpayer Identification Number for Pending Adoptions,* or such other form prescribed by the IRS. The ATIN application must be accompanied by documentary evidence to establish that an authorized placement agency placed the child in the prospective adoptive parent's household for legal adoption by the parent. Such documentary evidence may include: a copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency; an affidavit signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law; a document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; or a court document ordering or approving the placement of a child for adoption.

When an adoption becomes final, the adoptive parent must apply for an SSN for the child. Once obtained, the SSN, rather than the ATIN, must be used as the child's TIN on all future returns, statements, or other documents required by the Code.

An ATIN may be used by the prospective adoptive parents to meet the TIN requirements of sections 21(e)(10), 24(e), and 151(e), relating to the dependent care credit, the child tax credit, and the dependency exemption, respectively. Also, as may be prescribed by forms, instructions, or otherwise, an

ATIN may be used to meet the TIN requirements under sections 23(f) and 137(e), relating to qualified adoption expenses. The ATIN may not be used to meet the TIN requirement of section 32. See section 32(l).

The ATIN procedures do not apply to adoptions involving alien children. Generally, the Social Security Administration will assign an SSN to an alien child if all the requirements for assigning a number are met. When the Social Security Administration cannot assign an SSN, the child generally will be eligible for an ITIN.

In addition to adoptions involving alien children, there are two other types of adoptions to which the ATIN procedures may not apply. If the child placed for adoption is a foster child or is otherwise in the custody of a government agency or court (because, for example, the birth parents' rights were previously terminated for abuse or neglect), the government agency or court will generally obtain an SSN for the child and can make the SSN available to the prospective adoptive parent. Also, the prospective adoptive parent may be able to obtain the child's SSN from the birth parents (or other person) in the case of an adoption by the child's relatives or an adoption in which the adoptive parent and birth parent share information about the child and themselves.

Taxpayers are invited to comment on two issues partially addressed by the temporary regulations. First, comments are requested regarding what types of documents are available to establish that a child has been placed in the prospective adoptive parent's household for legal adoption. Also, comments are requested as to whether certain types of adoptions (in addition to foreign adoptions) should be completely excluded from the ATIN process. In particular, comments are requested regarding whether a prospective adoptive parent is always able to obtain a prospective adoptive child's SSN if the child is a foster child or is otherwise in the custody of a government agency or court.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Only individuals may receive ATINs under this Treasury decision, and an individual is not a small entity as defined in the Regulatory Flexibility Act. See 5 U.S.C. 601(6).

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Michael L. Gompertz of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6109–1T also issued under 26 U.S.C. 6109;

Section 301.6109–3T also issued under 26 U.S.C. 6109; * * *

Par. 2. Section 301.6109–1 is amended by adding paragraph (h)(2)(iii) to read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(h) * * *

(2) * * *

(iii) Paragraphs (a)(1)(i), (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section do not apply after November 24, 1997. For further guidance after November 24, 1997, see § 301.6109–1T(a)(1)(i), (a)(1)(ii) introductory text, and (a)(1)(ii)(A) and (B).

Par. 3. Section 301.6109–1T is added to read as follows:

§ 301.6109–1T Identifying numbers (temporary).

(a) *In general*—(1) *Taxpayer identifying numbers*—(i) *Principal types.* There are four principal types of taxpayer identifying numbers: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, employer identification numbers, and IRS adoption taxpayer identification numbers. Social security numbers take the form 000–00–0000. IRS individual taxpayer identification numbers and IRS adoption taxpayer identification numbers also take the form 000–00–0000 but include a specific number or specific numbers designated by the IRS. Employer identification numbers take the form 00–0000000.

(ii) *Uses.* Social security numbers, IRS individual taxpayer identification numbers, and IRS adoption taxpayer identification numbers are used to identify individual persons. For the definition of social security number and employer identification number, see §§ 301.7701–11 and 301.7701–12, respectively. For the definition of IRS individual taxpayer identification number, see § 301.6109–1(d)(3). For the definition of IRS adoption taxpayer identification number, see § 301.6109–3T. Except as otherwise provided in applicable regulations under this title or on a return, statement, or other document, and related instructions, taxpayer identifying numbers must be used as follows—

(A) Except as otherwise provided in § 301.6109–1(a)(1)(ii)(D), paragraph (a)(1)(ii)(B) of this section, and § 301.6109–3T, an individual required to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in § 301.6109–1(a)(1)(ii)(D) and § 301.6109–3T, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number must use an IRS individual taxpayer identification number.

(a)(1)(ii)(C) through (g) [Reserved]. For further guidance, see § 301.6109–1(a)(1)(ii)(C) through (g).

(h) *Effective date.* Paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section are applicable after November 24, 1997. For further guidance prior to November 24, 1997, see § 301.6109–1(a)(1)(i), (a)(1)(ii)(A) and (a)(1)(ii)(B).

Par. 4. Section 301.6109–3T is added to read as follows:

§ 301.6109–3T IRS adoption taxpayer identification numbers (temporary).

(a) *In general*—(1) *Definition.* An *IRS adoption taxpayer identification number* (ATIN) is a temporary taxpayer identifying number assigned by the Internal Revenue Service (IRS) to a child (other than an alien individual as defined in § 301.6109–1(d)(3)(i)) who has been placed, by an authorized placement agency, in the household of a prospective adoptive parent for legal adoption. An ATIN is assigned to the child upon application for use in connection with filing requirements under this title. When an adoption becomes final, the adoptive parent must apply for a social security number for the child. After the social security number is assigned, that number, rather than the ATIN, must be used as the child's taxpayer identification number on all returns, statements, or other documents required under this title.

(2) *Expiration and extension.* An ATIN automatically expires two years after the number is assigned. However, upon request, the IRS may grant an extension if the IRS determines the extension is warranted.

(b) *Definitions.* The following definitions apply for purposes of this section—

(1) *Authorized placement agency* has the same meaning as in § 1.152–2(c) of this chapter;

(2) *Prospective adoptive child* or *child* refers to a child who has not been adopted, but who has been placed in the household of a prospective adoptive parent for legal adoption by an authorized placement agency; and

(3) *Prospective adoptive parent* or *parent* refers to an individual in whose household a prospective adoptive child is placed by an authorized placement agency for legal adoption.

(c) *General rule for obtaining a number*—(1) *Who may apply.* A prospective adoptive parent may apply for an ATIN for a child if—

(i) The prospective adoptive parent is eligible to claim a personal exemption under section 151 with respect to the child;

(ii) An authorized placement agency places the child with the prospective adoptive parent for legal adoption;

(iii) The Social Security Administration will not process an application for an SSN by the prospective adoptive parent on behalf of the child (for example, because the adoption is not final); and

(iv) The prospective adoptive parent has used all reasonable means to obtain the child's assigned social security number, if any, but has been unsuccessful in obtaining this number (for example, because the birth parent who obtained the number is not legally required to disclose the number to the prospective adoptive parent).

(2) *Procedure for obtaining an ATIN.* If the requirements of paragraph (c)(1) of this section are satisfied, the prospective adoptive parent may apply for an ATIN for a child on Form W–7A, *Application for Taxpayer Identification Number for Pending Adoptions* (or such other form as may be prescribed by the IRS). An application for an ATIN should be made far enough in advance of the first intended use of the ATIN to permit issuance of the ATIN in time for such use. An application for an ATIN must include the information required by the form and accompanying instructions, including the name and address of each prospective adoptive parent and the child's name and date of birth. In addition, the application must include such documentary evidence as the IRS may prescribe to establish that a child was placed in the prospective adoptive parent's household by an authorized placement agency for legal adoption. Examples of acceptable documentary evidence establishing placement for legal adoption by an authorized placement agency may include—

(i) A copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency;

(ii) An affidavit signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law;

(iii) A document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; and

(iv) A court document ordering or approving the placement of a child for adoption.

(d) *Effective date.* The provisions of this section apply to income tax returns due (without regard to extension) on or after April 15, 1998.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	*
301.6109–3T	1545–1564
* * * *	*

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: October 24, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–30550 Filed 11–21–97; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5924–5]

Georgia: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Georgia's revisions consist of the provisions contained in the rules promulgated between July 1, 1994 and June 30, 1995, RCRA Cluster V. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revisions. Georgia's application for program revisions is available for public review and comment.

DATES: Final authorization for Georgia shall be effective January 23, 1998 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business December 24, 1997.

ADDRESSES: Copies of Georgia's program revision application are available during regular office hours of 9 a.m. to 5 p.m., Monday through Friday, at the following addresses for inspection and copying: Georgia Department of Natural Resources, Environmental Protection

Division, Floyd Towers East, Room 1154, 205 Butler Street, SE, Atlanta Georgia 30334; U.S. EPA Region IV, Library, 61 Forsyth Street, Atlanta, Georgia 30303; (404) 562–8448.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303; (404) 562–8448.

SUPPLEMENTARY INFORMATION:

I. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA or ''the Act''), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under section 3006 (g) of RCRA, 42 U.S.C. 6926 (g), and later apply for final authorization for HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, 270 and 279.

A. Georgia

Georgia initially received final authorization for its base RCRA program effective on August 21, 1984. Georgia has received authorization for revisions to its program through RCRA Cluster IV on May 6, 1996. Today, Georgia is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Georgia's application and has made an immediate final decision that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision up until December 24, 1997.

Copies of Georgia's application for these program revisions are available for inspection and copying at the locations indicated in the Addresses section of this document.

Approval of Georgia's program revisions shall become effective January 23, 1998, unless an adverse comment pertaining to the State's revisions discussed in this document is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Georgia is today seeking authority to administer the following Federal requirements promulgated between July 1, 1994 and June 30, 1995.

Checklist	Description	FR date and page	State rule
135	Amendments to Definition of Solid Wastes	59 FR 38545, 7/28/94	12–8–62(10)&(20), 12–8/64(1)(J) & (L), 12–8–65(a)(16)&(21) Rules effective 12/28/95 391–3–11–.07, 391–3–11–.10
136	Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal.	59 FR 43499 8/24/94	12–8–64(1)(A),(B)&(I), 12–8–65(a)(16)&(21) Rules effective 12/8/95, 391–3–11–.10, 391–3–11–.16
126.1	Testing and Monitoring Activities, Land Disposal Restrictions; Correction.	59 FR 47980, 9/19/94	12–8–62(10), 12–8–64((1)(A),(B)(D),(E) &(I), 12–8–65(a)(16)&(21) rule effective 12/28/95, 391–3–11–.16
137	Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes.	59 FR 48041, 9/19/94 60 FR 244 1/3/95 (correction)	12–8–62(11)(13)(14), 12–8–64(1)(A)(B)(D) (F)&(I) 12–8–65(a)(16)(21) rules effective 12/28/95 391–3–11–.07, 391–3–11–.10, 391–3–11–.16
139	Testing & Monitoring Activities	60 FR 3095 1/13/95	12/8/62(10), 12–8–64(1(A(B(D(E)(I),12–8–65(a)(16)(21) Rules effective 12/28/95 391–3–11–.02
140	Carbamate Production; Correction	60 FR 7848, 2/9/95, 60 FR 19165, 4/17/95, 60 FR 25620, 5/12/95	12–8–62(9)(10)(20), 12–8–64 (1)(D)(E)(J)(M), 12–8–65(a)(16)(21), Rules effective 12/28/95, and 12/30/96, 391–3–11–.07 (1)
141	Testing & Monitoring Activities	60 FR 17004, 4/4/95	12–8–62(10), 12–8–64 (1)(A)(B)(D))E))I), 12–8–65 (a)(16)(21), Rule effective 12/28/95 391–3–11–.07
142	Universal Waste Rule, Parts A, B, C, D, & E	60 FR 25492, 5/11/95	12–8–62 (13), 12–8–64 (1)(A)(B)(D)(E)(F)(I), 12–8–65 (a)(16)(21), Rule effective 12/28/95, 391–3–11–.02, 391–3–11–.07, 391–3–11.08, 391–3–11–.10, 391–3–11–.11, 391–3–11–.16, 391–3–11–.18
144	Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs: Removal of Legally Obsolete Rules.	60 FR 33912, 6/29/95	12–8–62 (10)(11), 12–8–64 (1) (A)(B)(C)(D)(E)(I) 12–8–65 (a) (3)(4)(16)(21), 12–8–66, Rules effective 12/28/95, 391–3–11–.07, 391–3–11–.10, 391–3–11–.11

Footnote: Georgia adopted the Universal Waste Rule by reference at 391–3–11–.18. A new section 391–3–11–.19 entitled Standards for Management of Waste Mercury-Containing Lamps was added to the rules effective December 30, 1996. Georgia has included this rule, 391–3–11–.19, in the authorization application as part of the state rules, but these rules will not be part of the authorized program.

B. Decision

I conclude that Georgia's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

II. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

III. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal mandate'' and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under State law. Second, the Act also generally excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program. The requirements being codified today are the result of Florida's voluntary participation in accordance with RCRA Subtitle C.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing State program that EPA previously authorized. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, this codification incorporates into the Code of Federal Regulations Florida's requirements which have already been authorized by EPA under 40 CFR part 271 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this codification.

IV. Certification Under the Regulatory Flexibility Act

EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the State requirements authorized by EPA under 40 CFR part 271. EPA's codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates ''State's'' requirements which have been authorized by EPA under 40 CFR part 271 into the Code of Federal Regulations. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: November 4, 1997.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 97–30818 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5925–3]

The National Priorities List for Uncontrolled Hazardous Waste Sites; Listing and Deletion Policy for Federal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of interim final policy statement.

SUMMARY: The Environmental Protection Agency (EPA) is announcing two interim final policy revisions relating to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which was promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA)). CERCLA requires that the NCP include a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List (NPL), which is Appendix B of 40 CFR part 300, constitutes this list.

This document announces an interim final revision to the Agency's policy on placing Federal facility sites on the NPL. For those Federal facility sites already on the NPL, this document describes an interim final policy revision for deleting such sites from the NPL. The interim final policy revisions apply to Federal facility sites that are RCRA-regulated facilities engaged in treatment, storage, or disposal of hazardous waste (''TSDs'' under the RCRA program). EPA requests public comments on these interim final policy revisions.

DATES: *Effective date:* These interim final policy revisions are effective November 24, 1997.

Comment date: The EPA will accept comments concerning these interim final policy revisions on or before January 23, 1998.

ADDRESSES: *By Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Federal Express: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters: U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to SUPERFUND.DOCKET@EPAMAIL.EPA.GOV. E-mailed comments must be followed up by an original and three copies sent by mail or Federal Express.

FOR FURTHER INFORMATION CONTACT: Seth Thomas Low, Federal Facilities Restoration and Reuse Office, Office of Solid Waste and Emergency Response (Mail Code 5101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–8692, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* (CERCLA or ''the Act''), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (SARA), Pub. L. No. 99–499, 100 Stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency (EPA or ''the Agency'') promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth guidelines and procedures for responding under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases. 42 U.S.C. 9601(23). ''Remedial action[s]'' are those ''consistent with permanent remedy taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).

Pursuant to section 105(a)(8)(B) of CERCLA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR part 300, is the National Priorities List (NPL).

CERCLA section 105(a)(8)(B) defines the NPL as a list of ''releases'' and as a list of the highest priority ''facilities.'' CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). Although Federal facility sites are eligible for the NPL pursuant to 40 CFR 300.425(b)(3), section 111(e)(3) of CERCLA limits the expenditure of Superfund monies at Federally-owned facilities. Federal facility sites also are subject to the requirements of CERCLA section 120, added by SARA.

Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (HRS), which EPA promulgated as Appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)).

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

II. Existing Policy for Listing Federal Facility Sites on the NPL

On March 13, 1989 (54 FR 10520), the Agency adopted a policy for listing Federal facility sites that are eligible for the NPL, even if they are also subject to the corrective action authorities of Subtitle C of RCRA.

III. Interim Final Revisions to Policy for Listing Federal Facility Sites on the NPL

A. Purpose of Today's Document

This document announces an interim final revision to the Agency's policy on placing Federal facility sites on the NPL. This document also announces an interim final policy revision for deleting Federal facility sites from the NPL. See discussion under section IV, below. Under current EPA policy, the Agency does not consider whether a Federal facility site is also subject to RCRA cleanup authorities in determining whether to place the site on the NPL. Likewise, EPA does not currently consider RCRA cleanup authorities when deciding whether to delete a Federal facility site from the NPL. With today's document, EPA is revising these polices to allow consideration of RCRA cleanup authorities in making listing and deletion decisions for Federal facility sites. EPA requests public comments on these interim final policy revisions.

B. RCRA/NPL Deferral Policy

In the preamble to the final rule promulgating the initial NPL (48 FR 40662, September 8, 1983), EPA announced the RCRA/NPL deferral policy,[1] which provided that ''where a site consists of regulated units of a RCRA facility operating pursuant to a permit or interim status, it will not be included on the NPL but will instead be addressed under the authorities of RCRA.'' Since that time, EPA has amended the RCRA/NPL deferral policy on a number of occasions.

On June 10, 1986 (51 FR 21057), EPA announced several components of a policy for placing RCRA-regulated sites on the NPL, but made clear that the policy applied only to non-Federal sites. The policy stated that the listing of non-Federal sites with releases that can be addressed under RCRA Subtitle C corrective action authorities generally would be deferred. However, EPA would continue to list certain RCRA facilities at which Subtitle C corrective action authorities are available if they had an HRS score of 28.50 or greater and fell within at least one of the following categories: (1) facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws; (2) facilities that have lost authorization to operate, or for which there are additional indications that the owner or operator will be unwilling to undertake corrective action; or (3) facilities, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake corrective action. EPA noted that it would consider at a later date whether this policy for deferring non-Federal RCRA regulated sites from the NPL should apply to Federal facilities.

As noted in section II above, on March 13, 1989 the Agency adopted a policy for listing Federal facility sites that are eligible for the NPL, even if they are also subject to the corrective action authorities of RCRA Subtitle C.

C. Rationale For Revising the Policy For Placing Federal Facilities Sites on the NPL

Recently Congress amended CERCLA section 120(d) to expressly grant EPA the discretion to consider non-CERCLA cleanup authorities when making a listing determination for Federal facility sites. Section 120(d), as amended by section 330 of the Defense Authorization Act of FY 97, now provides that:

> It shall be an appropriate factor to be taken into consideration for the purposes of section 105(a)(8)(A) that the head of the department, agency, or instrumentality that owns or operates a facility has arranged with the Administrator or appropriate State authorities to respond appropriately, under authority of a law other than this Act [CERCLA], to a release or threatened release of a hazardous substance. [CERCLA section 120(d)(2)(B)]

EPA believes that amended section 120(d) provides EPA with clear legal authority to consider cleanup under RCRA Subtitle C corrective action when making a listing decision for Federal facility sites. The legislative history of this provision supports EPA's view. The conference committee report states that the revised section 120(d) gives EPA ''the discretion to withhold National Priorities List designation of a Federal facility cleanup action if the site is already subject to an approved Federal or State cleanup plan.'' H.R. Conf. Rep. No. 724, 104th Cong., 2d Sess. 724 (1996). In light of this amendment to CERCLA and the ongoing Agency efforts for administrative reforms to CERCLA that allow greater flexibility to address Superfund sites, EPA is revising its listing policy for Federal facility sites. The Agency believes that this revision may free CERCLA oversight resources for use in situations where another authority is not available.

D. Criteria for RCRA/NPL Deferral of Federal Facility Sites

In today's document, EPA sets forth the criteria the Agency will consider in determining when a Federal facility site may not be placed on the NPL because the cleanup is being conducted pursuant to RCRA Subtitle C corrective action authorities (''RCRA/NPL deferral for Federal facility sites''). A site should satisfy all of these criteria to be eligible for deferral. Where there is uncertainty as to whether the criteria have been met, deferral generally will be inappropriate. The criteria are the following:

1. The CERCLA site is currently being addressed by RCRA Subtitle C corrective action authorities under an existing enforceable order or permit containing corrective action provisions.
2. The response under RCRA is progressing adequately.
3. The state and community support deferral of NPL listing.

E. Discussion of Each Criterion

The first criterion states that the site is being addressed by RCRA corrective action authorities under an existing order or permit. The criterion specifies that the requirement applies to sites as defined by CERCLA, and that the authority addressing the site is RCRA Subtitle C corrective action.

Under the first criterion, corrective action orders or permits issued by EPA or an authorized state program that address corrective action at the facility must generally be in place as a condition for deferral.[2] This criterion serves as an objective indicator that contamination at a site is addressable under RCRA corrective action authorities. The term ''addressable'' in this context means that a CERCLA site is fully remediable by a permit or order with a schedule of compliance, whether or not actual cleanup has begun. Corrective action permits or orders should require the cleanup of all releases at the CERCLA site (*e.g.*, if

[1] The terms *deferral* and *deletion* as used in the context of the NPL refer to the following: Deferral refers to the decision not to list a site on the NPL, or not retain a site on the NPL, to allow another authority (RCRA corrective action in this case) to handle the remediation of the site in lieu of CERCLA. Deletion is the act of taking a site off the NPL, which may occur because cleanup at a site is complete or because another authority (such as RCRA corrective action) can be used to bring about remediation at the site and further CERCLA action is not needed.

[2] It should be noted that the RCRA/NPL deferral does not relieve a Federal facility from the CERCLA section 120(d) requirement to conduct preliminary assessments.

contamination stemming from the CERCLA ''release'' extends beyond the boundaries of a particular RCRA facility, such releases must be addressable under RCRA sections 3004(v) and 3008(h) or other enforcement authority under RCRA).[3] Corrective action orders or permits which do not require cleanup of all releases at the CERCLA site should be modified to address such releases; otherwise the CERCLA site would not be a candidate for deferral.

Under the second criterion, EPA evaluates whether response under RCRA is progressing adequately. Under this criterion, noncompliance with corrective action orders or permits generally would be regarded as an indicator that response under RCRA is not progressing adequately. However, even if a Federal facility site (*i.e.*, the owner/operator) is in compliance with a corrective action order or permit, EPA may determine that response is not progressing adequately based upon other factors. For example, the Agency may consider whether there has been a history of protracted negotiations due primarily to an uncooperative owner or operator.

Under the third criterion, EPA evaluates whether the affected state and community where the Federal facility site is located support deferral of the NPL listing of such site. Under this criterion, EPA expects the state and Federal facility which are interested in NPL deferral to take appropriate steps to inform the affected community and other affected parties (*e.g.*, communities downstream from the site, Natural Resource Trustees, etc.), as appropriate, of such interest and seek community participation on such issue. EPA believes that community participation will be facilitated by the establishment of Restoration Advisory Boards or Site Specific Advisory Boards by the affected Federal agencies in conjunction with the state. The state and Federal facility which are interested in NPL deferral should also document all of their interactions with the community and inform EPA of any possible opposition to NPL deferral of the site.

[3] Under CERCLA, the term *facility* is meant to be synonymous with ''site'' or ''release'' and is not meant to suggest that the listing is geographically defined (56 FR 5600, February 11, 1991). The size or extent of a facility listed on the NPL may extend to those areas where the contamination has ''come to be located.'' (See CERCLA section 101(9)). On the other hand, a ''facility'' as defined under RCRA is ''all contiguous property under the control of the owner or operator seeking a Subtitle C permit'' (58 FR 8664, February 16, 1993). Thus, a RCRA site relates more to property boundaries, and a CERCLA site/facility/release includes contamination irrespective of RCRA facility boundaries.

IV. Policy for Deleting Sites From the NPL Based Upon RCRA Deferral

A. RCRA Deletion Policy

On March 20, 1995 (60 FR 14641), the Agency announced the adoption of a policy for deleting RCRA facilities from the NPL before a cleanup is complete, if the site is being, or will be, adequately addressed by the RCRA corrective action program, provided certain criteria were met. The Agency based its action on the goals of freeing CERCLA oversight resources for sites where another authority is not available and avoiding possible duplication of effort. The Agency made clear that such policy does not pertain to Federal facility sites, even if such facilities are also subject to the corrective action authorities of Subtitle C of RCRA.

B. Revision to RCRA Deletion Policy

This document announces that EPA is revising the RCRA deletion policy to also be applicable to Federal facility sites. As noted in section III. C, above CERCLA section 120(d) was amended to expressly authorize EPA to consider other cleanup authorities in making Federal facility site listing decisions. In light of EPA's express discretion under section 120(d), EPA believes that it is also now appropriate to apply the Agency's RCRA deletion policy to Federal facility sites on the NPL. The first criterion under the RCRA deletion policy is that a site be eligible for RCRA deferral under EPA's current RCRA/NPL deferral policy. Until EPA revised the 1989 Federal facility site listing policy no Federal facility could satisfy the RCRA deletion policy criteria.

The Agency believes that revising the RCRA deletion policy to be applicable to Federal facility sites is consistent with CERCLA section 120(d), as amended, and the ongoing Agency efforts for administrative reforms to CERCLA that allow greater flexibility to address Superfund sites. The Agency believes that this revision may free CERCLA oversight resources for use in situations where another authority is not available. By this interim final revision, the criteria and process stated in the March 20, 1995 RCRA deletion policy are now applicable for deleting Federal facility sites from the NPL.

[Notice: This document does not represent final agency action, but is intended solely as guidance. It does not create any legal obligations. EPA officials may decide to follow the policies discussed in this document, or to act at variance with such policies, based on an analysis of specific site circumstances.]

Dated: November 13, 1997.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 97–30518 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 62, No. 226
Monday, November 24, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1794

RIN 0572–AB33

Environmental Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) hereby revises its existing environmental regulations, Environmental Policies and Procedures, which have served as RUS' implementation of the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA. Based on new Congressional mandates, changes in the electric industry, and the agency's experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a smooth, efficient, and effective manner.

DATES: Public comments must be received by RUS or bear a postmark or equivalent, no later than January 23, 1998.

ADDRESSES: Written comments should be sent to Gary J. Morgan, Director, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, Room 2242, 1400 Independence Ave., SW., Washington, DC 20250–1571. This proposed rule and the guidance bulletins in this rule will be available on the Internet via the RUS home page at www.usda.gov/rus/.

FOR FURTHER INFORMATION CONTACT: Gary J. Morgan, Director or Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW., Washington, DC 20250–1571. Telephone (202) 720–1784. E-mail address (gmorgan@rus.usda.gov) or (lwolfe@rus.usda.gov).

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The application for financial assistance under the RUS electric and telecommunications programs and the application for loans and grants under the RUS water and waste program are discretionary, regulatory requirements will, therefore, apply only to those entities which choose to apply for financial assistance or funding.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comments on this information collection must be received by January 23, 1998.

Comments are invited in: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

For further information contact Lawrence R. Wolfe, Senior Environmental Protection Specialist; Engineering and Environment Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW, Washington, DC 20250–1571. Telephone: (202) 720–1784. E-mail: (lwolfe@rus.usda.gov).

Title: 7 CFR Part 1794, Environmental Policies and Procedures.

OMB Number: 0572–NEW.

Type of Request: New collection.

Abstract: The information collection contained in this rule are requirements prescribed by the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508) and certain related Federal environmental laws, statutes, regulations, and Executive Orders.

The major events which influenced the promulgation of the proposed revisions to this rule were the 1994 reorganization of the U.S. Department of Agriculture, which transferred the water and waste program from the former Farmers Home Administration to RUS, reforms within the electric and telecommunications programs, and fundamental changes in RUS' implementation of the CEQ regulations.

The proposed rule will combine all three programs (electric, telecommunications, and water and waste) under a single environmental regulation and will eliminate unnecessary and burdensome requirements previously imposed on applicants seeking financial assistance under the three programs. The streamlining of the regulation will allow RUS headquarters and field staff to more expeditiously evaluate the environmental implications of implementing RUS programs and thus speed up the delivery of these programs to qualified applicants.

RUS applicants would provide environmental documentation, as prescribed by the rule, to assure that policy contained in NEPA is followed.

The burden will vary depending on the type, size, and location of each project, which would then prescribe the type of information collection involved. The collection of information is only that information which is essential for RUS to provide environmental safeguards and to comply with NEPA as implemented by the CEQ regulations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 229 hours per response.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondents: 3.

Estimated Total Annual Burden on Respondents: 415,000 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis, Rural Utilities Service. Telephone: (202) 720–0812.

Send comments regarding this information collection requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer, USDA, Room 10102, New Executive Office Building, Washington, DC 20503, and to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, Stop 1522, 1400 Independence Ave., SW., Room 4034, Washington, DC 20250–1522.

Comments are best assured of having full effect if OMB receives them within 30 days of publication in the **Federal Register**. All comments will become a matter of public record.

National Performance Review

This regulatory action is being taken as part of the National Performance Review to eliminate unnecessary regulations and improve those that remain in force.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Program Affected

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, 10.760, Water and Waste Disposal System for Rural Communities, 10.764, Resource Conservation Development Loans, and 10.765, Watershed Protection and Flood Prevention Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402.

Intergovernmental Review

This program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Unfunded Mandate

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act) for State, local, and tribal governments of the private sector. Thus today's rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandate Reform Act.

Background

On March 13, 1984, the Rural Electrification Administration (predecessor of RUS) published 7 CFR part 1794, Environmental Policies and Procedures, as a final rule in the **Federal Register** (49 FR 9544) covering the actions of the electric and telecommunications programs. Based on new Congressional mandates, changes in the electric industry, and the agency's experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a smooth, efficient, and effective manner.

The existing 7 CFR part 1794 was designed to process proposals from RUS' electric and telecommunications programs in addition to the agency's internal administrative actions. The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), under which RUS became the successor to the Rural Electrification Administration, transferred the water and waste program from the former Farmers Home Administration (FmHA) to RUS. Most changes proposed to 7 CFR part 1794 are the result of the addition of the water and waste program to RUS. The environmental review requirements of the water and waste program were previously contained in 7 CFR part 1940, subpart G. While the environmental review of electric and telecommunications proposals is entirely managed from the national office, the environmental review of all but major or highly controversial water and waste proposals is managed by USDA Rural Development staff in state, county, or district offices. To avoid confusion, some sections and subsections are further subdivided to differentiate among the responsibilities of the three program areas. Examples of differences in program responsibilities and requirements can be found in § 1794.5, Responsible Officials and § 1794.13, Public Involvement.

Due to the requirements of the existing regulation, RUS has sometimes gone through a lengthy environmental review with no commensurate benefit to the quality of the human environment. Consequently, significant time and resources have been expended by RUS and its applicants when early indications strongly suggest that an easier and more expeditious procedure would be more prudent. Experience has shown that several types of minor RUS applicant proposals involve negligible environmental impact. In a number of instances, such projects have been delayed as a result of outdated procedures without any benefit to the quality of the human environment.

To foster clarity, readability, and brevity, this proposed rule includes changes to the format of the current rule. A list of definitions has been added to subpart A. Existing subparts B and C have been combined. The order in which proposals are classified in subpart C has been arranged from minor to major actions. The arrangement of subparts D through G mirrors the order of classification in subpart C. Information originally included in subpart J on Supplemental Environmental Impact Statements (EIS) has been incorporated into proposed subpart G.

Appendix A, which displays a flow chart of RUS' EIS process would be deleted. RUS believes that displaying a flow chart of its EIS process as part of this regulation had limited value and there is no benefit to include it in the proposed revision.

For further guidance in the preparation of public notices and environmental documents, RUS is preparing a series of guidance bulletins. Three program specific bulletins that will be issued concurrently with the final rule provide guidance in preparing the Environmental Report (ER) for proposed actions classified as categorical exclusions and proposed actions which require an Environmental Assessment (EA). A fourth bulletin provides applicants with guidance in

the preparation of public notices and public involvement activities. Further information on these bulletins is provided in § 1794.8.

This proposed rule contains a variety of substantive and procedural changes from the provisions of the current rule. Some of these revisions are minor or merely intended to clarify existing RUS policy and procedure, such as § 1794.4 (Trivial Violations) which was deleted and § 1794.7 which defines some of the terminology specific to the agency. Other revisions reflect fundamental changes in RUS' implementation of the CEQ regulations and are outlined below.

The relationship between RUS and its electric and telecommunications applicants has changed substantially since RUS issued the final rule in March of 1984. Changes that have occurred in the last 4 years have been particularly dramatic. Historically, RUS provided substantially all of its applicants' capital needs and established a lending relationship reflecting that dominant lending role. However, because of limited annual loan authorization levels, RUS no longer serves such a role. Moreover, in a 1993 amendment to section 306E of the Rural Electrification Act of 1936, as amended (7 U.S.C. 936e), Congress required RUS to abandon its close hands-on control of its applicants and instead follow the practices of private market lenders. RUS has done so through the development of new forms of loan agreements and security instruments and the publication of 7 CFR Part 1717, subpart M, Operational Controls, which reduce or eliminate much of the oversight and control historically exercised by RUS.

Reflecting these changes and reforms, RUS proposes to revise that section of the regulations identifying actions requiring environmental review. Environmental reviews will be required in connection with the approval of financial assistance for applicants and the issuance of rules, regulations, and bulletins by RUS. No reviews will be required in connection with approvals provided by RUS pursuant to its loan contracts and security instruments with applicants such as approvals of lien accommodations or the use of general funds by applicants. These approvals are ministerial and are not federal actions subject to environmental reviews.

The existing regulation states that all RUS prepared environmental documents will use metric units with non-metric equivalents in parentheses and that environmental documents prepared by or for the applicant should follow the same format. RUS proposes to reverse that format. All RUS prepared environmental documents will use non-metric equivalents with one of the following two options: metric units in parentheses immediately following the non-metric equivalents or a metric conversion table as an appendix. RUS environmental guide bulletins will recommend that applicants follow the same format.

Within subpart C, a classification system defines the level of environmental review required for agency and applicant proposed actions. Sections 1794.21 through 1794.25 are further subdivided when appropriate to differentiate between actions being proposed by RUS and actions proposed by electric, telecommunications, and water and waste program applicants. The purpose of these additional subsections is to aid program applicants in determining the category in which their proposed action is classified.

A number of classification changes are being proposed within subpart C. These proposed reclassifications involve minor actions proposed by applicants which rarely, if ever, result in significant environmental impact or public interest. These changes will streamline environmental review of minor actions, and will allow the agency to focus its resources on larger projects. RUS believes that the proposed changes will provide adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

Within §§ 1794.21(a) and 1794.22(a), RUS proposes to modify the thresholds for acreage (facility sites), and capacity (generation facilities). Three categories of proposals that previously required RUS approval of applicant actions would be deleted, five categories of proposals would be downgraded to no longer require an Environmental Report (ER), and six new categories of proposals would be added to § 1794.21(a). One proposal that previously required an Environmental Assessment (EA) and two new categories of proposals would be added to § 1794.22(a).

In addition to modifying the thresholds for acreage and capacity, RUS proposes to impose different thresholds for construction of electric generating capacity at new sites versus existing sites and to add three new categories of proposals within § 1794.23. Proposed acreage and capacity threshold changes within § 1794.24, and a proposed capacity threshold change within § 1794.25 reflect changes that would be made in §§ 1794.21(a), 1794.22(a), and 1794.23. No change is proposed for the existing thresholds for transmission line length, however, the existing thresholds for multiple substations associated with transmission lines would be eliminated. Capacity thresholds would also be eliminated for hydroelectric proposals in §§ 1794.22 and 1794.23. RUS proposed instead to, in most cases, adopt the NEPA document prepared by the Federal Energy Regulatory Commission, the Federal licensing agency of hydroelectric projects in which RUS applicants participate.

The thresholds for proposed actions in the Water and Waste Program as defined in 7 CFR part 1940, subpart G, were reclassified in §§ 1794.21(b) and 1794.22(b). In 7 CFR part 1940, subpart G, EAs are classified into two categories, Class I and II; each category establishing a level of documentation commensurate with the extent of potential environmental impacts. Class I EAs were classified as routine minor actions which typically do not justify more extensive documentation as are necessary for Class II EAs. The Class I EA includes a checklist to document environmental impacts similar to that of a categorical exclusion.

Based on historical experience and a survey of the thresholds established by other agencies who administer similar types of water and waste programs, RUS is proposing to eliminate the two tiered classification for EAs and adopt the more traditional classification scheme as outlined in the CEQ regulations. Because RUS co-funds a significant portion of its projects with other Federal and State agencies, a more traditional classification and documentation scheme is thought to be more conducive to minimizing duplicative environmental review efforts.

All current thresholds in 7 CFR part 1940, subpart G were re-evaluated and would be reclassified based on the following parameters. The primary parameter determining thresholds between categorically excluded actions and those actions which require the preparation of EAs would be the volume of water or wastewater, as defined in terms of equivalent residential dwelling units. The proposed regulation would require applicants to design categorically excluded proposals to meet current needs with a modest growth potential and to serve predominantly residential uses either within the existing service area of a system or confined to within a one-mile extension beyond current community boundaries. The proposed regulation would require that proposed actions not meeting the above conditions warrant a more detailed analysis as outlined for EAs.

In addition, specialized criteria would be established for not classifying a proposed action as a categorical exclusion. These criteria are consistent conceptually with the U. S. Environmental Protection Agency's environmental review requirements in 40 CFR 6.505 for Title II of the Clean Water Act, Grants for Construction of Treatment Works.

Reviewers that disagree with RUS' proposed classifications and or thresholds are encouraged to cite specific experiences that support their position on this proposed action.

RUS proposes to modify its procedures in subparts D through G of this part. In § 1794.32, public notice requirements are established for proposed actions that impact important land resources (floodplains, wetlands, and important farmland). Notice of availability requirements in § 1794.42 would be modified for all three program areas. As proposed, the EA would be the subject document of the notice, where previously, the applicant's ER was the subject document. By this change the notice requirements for all three programs would be consistent for both EA proposals and EA with scoping proposals. This change will encourage more public involvement by allowing public review of EA proposals prior to the issuance of a Finding of No Significant Impact (FONSI).

RUS would also change its notice requirements for electric program projects requiring scoping. The timing of RUS' **Federal Register** notice for public scoping meetings in § 1794.52 would be reduced from 30 days to 14 days prior to the meeting. RUS has determined that no appreciable benefit has resulted from an earlier notice requirement. The existing regulation allows RUS to adopt the applicant's ER as its EA but requires RUS to prepare its own EA from the applicant's Environmental Impact Assessment (EIA) where a proposed action requires scoping. RUS proposes to change this requirement by allowing the EIA to serve as its EA provided RUS completes an independent evaluation which certifies the accuracy of the document (see § 1794.53) and thus be consistent with 40 CFR § 1506.5(a).

RUS would modify its policy regarding the use of contractor prepared EIS's. Under the existing regulation, RUS was required to use agency funds when an independent contractor was chosen by RUS to prepare the EIS. In accordance with the provisions of 7 CFR part 1789, ''Use of Consultants Funded by Applicants'' and Section 759A of the Federal Agriculture Improvement and Reform Act of 1996, the draft and final EIS may be prepared by a consultant selected by RUS and funded by the applicant. A new requirement, publication of a notice of availability by RUS and the applicant for a Record of Decision would be established in § 1794.63. Information on Supplemental EIS's would be included in subpart G of this part.

Any environmental document accepted or prepared by RUS prior to the effective date of these regulations should be developed in accordance with the RUS' environmental requirements in effect at the time the document was accepted or prepared by RUS.

List of Subjects in 7 CFR Part 1794

Environmental impact statements, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is proposed to be amended by revising part 1794 to read as follows:

PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES

Subpart A—General

Subpart B—Implementation of the National Environmental Policy Act

Subpart C—Classification of Proposals

Subpart D—Procedure for Categorical Exclusions

Subpart E—Procedure for Environmental Assessments

Subpart F—Procedure for Environmental Assessments With Scoping

Subpart G—Procedure for Environmental Impact Statement

Subpart H—Adoption of Environmental Documents

Authority: 7 U.S.C. 6941 *et seq.*; 42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500–1508.

Subpart A—General

§ 1794.1 Purpose.

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508) and certain related Federal environmental laws, statutes, regulations, and Executive Orders (E.O.) that apply to RUS' programs and administrative actions.

(b) The policies and procedures contained in this part are intended to help RUS officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. In assessing the potential environmental impacts of its actions, RUS will consult early with appropriate Federal, State, and local

agencies and other organizations to provide decision-makers with information on the issues that are truly significant to the action in question.

§ 1794.2 Authority.

(a) This part derives its authority from and is intended to be compliant with NEPA, CEQ Regulations for Implementing the Procedural Provisions of NEPA, and other RUS regulations.

(b) Where practicable, RUS will use NEPA analysis and documents and review procedures to integrate the requirements of related environmental statutes, regulations, and orders.

(c) This part integrates the requirements of NEPA with other planning and environmental review procedures required by law, or by RUS practice including but not limited to:

(1) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(2) The National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(3) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);

(4) E.O. 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 Comp., p. 154);

(5) E.O. 11514, Protection and Enhancement of Environmental Quality (3 CFR, 1970 Comp., p. 104);

(6) E.O. 11988, Floodplain Management (3 CFR, 1977 Comp., p. 117);

(7) E.O. 11990, Protection of Wetlands (3 CFR, 1977 Comp., p. 121); and

(8) E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations (3 CFR, 1994 Comp., p. 859).

(d) Applicants are responsible for ensuring that proposed actions are in compliance with all appropriate RUS requirements, environmental statutes, regulations, and E.O.s. Bulletins identified in § 1794.8 contain a list of certain statutes, regulations, and E.Os that may be applicable to proposed actions for which RUS financial assistance is provided. Environmental documents submitted by the applicant shall be prepared under the supervision and guidance of RUS and RUS will evaluate and be responsible for the accuracy of all information contained therein.

§ 1794.3 Actions requiring environmental review.

The provisions of this part apply to actions by RUS including the approval of financial assistance pursuant to the Electric, Telecommunications, and Water and Waste Programs, the disposal of property held by RUS pursuant to such programs, and the issuance of new or revised rules, regulations, and bulletins.

§ 1794.4 [Reserved]

§ 1794.5 Metric units.

RUS normally will prepare environmental documents using non-metric equivalents with one of the following two options; metric units in parentheses immediately following the non-metric equivalents or a metric conversion table as an appendix. Environmental documents prepared by or for a RUS applicant should follow the same format.

§ 1794.6 Responsible officials.

The Administrator of RUS has the responsibility for Agency compliance with all environmental laws, regulations, and E.O.s that apply to RUS programs and administrative actions. Responsibility for ensuring environmental compliance for actions taken by RUS has been delegated as follows:

(a) *Electric and Telecommunications Programs.* The appropriate Assistant Administrator is responsible for ensuring compliance with this part for the respective programs.

(b) *Water and Waste Program.* The Assistant Administrator for this program is responsible for ensuring compliance with this part at the national level. The State Director is the responsible official for ensuring compliance with this part for actions taken at the State Office level.

§ 1794.7 Definitions.

The following definitions, as well as the definitions contained in 40 CFR part 1508 of the CEQ regulations, apply to the implementation of this part:

Applicant. The organization applying for financial assistance or other approval from either the Electric or Telecommunications Programs or the organization applying for a loan or grant from the Water and Waste Program.

Construction Work Plan (CWP). The document required by 7 CFR part 1710.

Emergency situation. The repairs made to return the damaged facilities of an applicant's system back to service because of a natural disaster or system failure that may involve an immediate or imminent threat to public health or safety.

Environmental Impact Analysis (EIA). The document submitted by the applicant for proposed actions subject to compliance with § 1794.24 and under special circumstances § 1794.25.

Environmental Report (ER). The environmental document and documentation normally submitted by applicants for proposed actions subject to compliance with §§ 1794.22 and 1794.23. An ER for the Water and Waste Program refers to the environmental review documentation normally included as part of the Preliminary Engineering Report.

Environmental review. Any one or all of the levels of environmental analysis described under subpart C of this part.

Equivalent Dwelling Unit (EDU). Level of water or waste service provided to a typical rural residential dwelling.

Important Land Resources. Defined pursuant to the U.S. Department of Agriculture's Departmental Regulation 9500–3, Land Use Policy, as important farmland, prime forestland, prime rangeland, wetlands, and floodplains. Copies of the Departmental Regulation are available from USDA, Rural Utilities Service, Washington, DC 20250.

Loan Design. Document required by 7 CFR part 1737.

Preliminary Engineering Report (PER). Document required by 7 CFR part 1780 for Water and Waste Programs. A PER is prepared by an applicant's engineering consultant documenting a proposed action's preliminary engineering plan and design and the applicable environmental review activities as required in this part. Upon approval by RUS, the PER, or a portion thereof, shall serve as the RUS environmental document.

Supervisory control and data acquisition system (SCADA). Electronic monitoring and control equipment installed at electric substations and switching stations.

Third-party consultant. A party selected by RUS to prepare the EIS for proposed actions listed in § 1794.25 where the applicant initiating the proposal agrees to fund preparation of the document in accordance with the provisions of 7 CFR Part 1789, ''Use of Consultants Funded by Borrowers'' and Section 759A of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2204b(b)).

§ 1794.8 Guidance.

(a) *Electric and Telecommunications Programs.* For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of program specific guidance bulletins. RUS Bulletin 1794A–600 provides guidance in preparing the ER for proposed actions classified as categorical exclusions (CEs) (§ 1794.22(a)); RUS Bulletin 1794A–601 provides guidance in preparing the ER for proposed actions which require EAs (§ 1794.23(b)); and RUS Bulletin 1794A–602 provides guidance in the preparation of public notices. Copies of

these bulletins are available upon request by contacting Rural Utilities Service, Publications Office, PSRA, Stop 1522; 1400 Independence Avenue, SW; Washington, D.C. 20250–1522.

(b) *Water and Waste Program.* RUS Bulletin 1780–26 provides guidance in preparing the PER for proposed actions classified as CEs (§ 1794.22(b)) and EAs (§ 1794.23(c)). A copy of this bulletin is available upon request by contacting the appropriate State Director. State Directors may provide supplemental guidance to meet State and local laws and regulations and to provide for orderly application procedures and efficient service to applicants. State Directors shall obtain the Administrator's approval for all supplements to RUS Bulletin 1780–26.

§ 1794.9 [Reserved]

Subpart B—Implementation of the National Environmental Policy Act

§ 1794.10 Applicant responsibilities.

As described in subpart C of this part, applicants shall, under RUS' direct guidance and supervision, prepare the applicable documentation concurrent with a proposed action's engineering, planning, and design activities. Documentation shall not be considered complete until all public review periods, as applicable, have expired and RUS' concurrence, as defined by the appropriate decision document and associated public notice, has been issued. This section does not in any way relieve RUS or the applicant of the responsibilities for the scope, objectivity, and content of the entire environmental document or compliance with any policy, regulation, EO, or statute.

§ 1794.11 Apply NEPA early in the planning process.

The environmental review process requires early coordination with and involvement of RUS. Applicants should consult with RUS at the earliest stages of planning for any proposal that may require an RUS action. For proposed actions that normally require an EIS, applicants shall consult with RUS prior to obtaining the services of an environmental consultant.

§ 1794.12 Consideration of alternatives.

In determining what are reasonable alternatives, RUS considers a number of factors. These factors may include, but are not limited to, the proposed action's size and scope, state of the technology, economic considerations, legal and socioeconomic concerns, availability of resources, and the timeframe in which the identified need must be fulfilled.

§ 1794.13 Public involvement.

(a) *General.* In carrying out its responsibilities under NEPA, RUS shall make diligent efforts to involve the public in the environmental review process through public notices and public hearings and meetings. Specific guidance is found in RUS bulletins. See § 1794.8.

(1) All public notices required by this part shall describe the nature, location, and extent of the proposed action and indicate the availability and location of additional information. They shall be published in newspaper(s) of general circulation within the proposed action's area of environmental impact and the county(s) in which the proposed action will take place or such other places as RUS determines.

(2) The number of editions in which the notices should be published will be established on a project-by-project basis. Alternative forms of notice may also be necessary to ensure that residents located in the area affected by the proposed action are notified. The applicant should consult with RUS prior to the issuance of notices.

(3) A copy of all comments received by the applicant concerning environmental aspects of the proposed action shall be provided to RUS in a timely manner. RUS and applicants shall assess and consider public comments both individually and collectively. Responses to public comments will be appended to the applicable environmental document.

(4) RUS and applicants shall make available to the public all environmental documents, comments received, errata sheets and amendments thereto, public notices, interagency correspondence, and any applicable reference material. These materials shall be placed in locations convenient for the public as determined by RUS and the applicants.

(5) Public hearings or meetings shall be held at reasonable times and locations concerning environmental aspects of a proposed action in all cases where, in RUS' opinion, the need for hearings or meetings is indicated in order to develop adequate information on the environmental implications of the proposed action. Public hearings or meetings will be coordinated to the extent practicable with other meetings which may be required by RUS. Applicants shall, as necessary, participate in all public hearings or meeting.

(6) Scoping procedures, in accordance with 40 CFR 1501.7, are required for proposed actions normally requiring an EA with scoping (§ 1794.24) or an EIS (§ 1794.25). RUS may require scoping procedures to be followed for other proposed actions where appropriate to achieve the purposes of NEPA.

(b) *Electric and Telecommunication Programs.* RUS shall have public notices published in the **Federal Register** and the applicant shall concurrently have a similar notice published in a newspaper(s) as described in this section. Applicants shall obtain proof of publication from the newspaper(s) for inclusion into the applicable environmental document.

(c) *Water and Waste Programs.* The applicant shall have public notices described in this section published in a newspaper(s). Applicants shall obtain proof of publication from the newspaper(s) for inclusion into the applicable environmental document. Only where the proposed actions requires an EIS shall RUS, in addition to applicant published notices, publish notice in the **Federal Register**.

§ 1794.14 Interagency involvement and coordination.

In an attempt to reduce or eliminate duplication of effort with State or local procedures, RUS will, to the extent possible and in accordance with 40 CFR 1506.2, actively participate with any governmental agency to cooperatively or jointly prepare environmental documents so that one document will comply with all applicable laws. Where RUS has agreed to participate as a cooperating agency, in accordance with 40 CFR 1501.6, RUS may rely upon the lead agency's procedures for implementing NEPA procedures. In addition, RUS shall request that:

(a) The lead agency indicate that RUS is a cooperating agency in all NEPA related notices published for the proposed action;

(b) The scope and content EA or EIS satisfies the statutory and regulatory requirements applicable to RUS; and

(c) The applicant shall inform RUS in a timely manner of its involvement in a proposed action where another Federal agency is preparing an environmental document so as to permit RUS to adequately fulfill its duties as a cooperating agency.

§ 1794.15 Limitations on actions during the NEPA process.

(a) Until RUS concludes its environmental review process, the applicant shall take no action concerning the proposed action which would have an adverse environmental impact or limit the choice of reasonable alternatives being considered in the environmental review process. See 40 CFR 1506.1.

(b) Electric Program. In determining which applicant activities related to a

proposed action can proceed prior to completion of the environmental review process, RUS must determine, among other matters that:

(1) The activity shall not have an adverse environmental impact and shall not preclude the search for other alternatives. For example, purchase of water rights, optioning or transfer of land title, or continued use of land as historically employed will not have an adverse environmental impact. However, site preparation or construction at or near the proposed site (*e.g.* rail spur) or development of a related facility (*e.g.* opening a captive mine) normally will have an adverse environmental impact.

(2) Expenditures are minimal. To be minimal the expenditure must not exceed the amount of loss which the applicant could absorb without jeopardizing the Government's security interest in the event the proposed action is not approved by the Administrator, and must not compromise the objectivity of RUS' environmental review. Notwithstanding other considerations, expenditures equivalent to up to 10 percent of the proposed action's cost normally will not compromise RUS' objectivity. Expenditures for the purpose of producing documentation required for RUS' environmental review are excluded from this limitation.

§ 1794.16 Tiering.

It is the policy of RUS to prepare programmatic level analysis in order to tier an EIS and an EA where it is practicable, and there will be a reduction of delay and paperwork, or where better decision making will be fostered. This policy is in compliance with the requirements of 40 CFR 1502.20.

§ 1794.17 Mitigation.

(a) *General.* In addition to complying with the requirements of 40 CFR 1502.14(f), it is RUS policy that a discussion of mitigative measures essential to render the impacts of the proposed action not significant will be included in or referenced in the Finding of No Significant Impact (FONSI) and the Record of Decision (ROD).

(b) *Water and Waste Program.* (1) Mitigation measures which involve protective measures for environmental resources cited in this part or restrictions or limitations on real property located in the service areas of the proposed action shall be negotiated with applicants and any relevant regulatory agency so as to be enforceable. All mitigation measures incorporating land use issues shall recognize the rights and responsibilities of landholders in making private land use decisions and recognize the responsibility of governments in influencing how land may be used to meet public needs.

(2) Mitigation measures shall be included in the letter of conditions.

(3) RUS has the responsibility for the post approval construction or security inspections or monitoring to ensure that all mitigation measures included in the environmental documents have been implemented as specified in the letter of conditions.

§§ 1794.18–1794.19 [Reserved]

Subpart C—Classification of Proposals

§ 1794.20 Control.

Electric and Telecommunications Programs. For environmental review purposes, RUS has identified and established categories of proposed actions (§§ 1794.21 through 1794.25). An applicant may propose to participate with other parties in the ownership of a project where the applicant(s) does not have sufficient control to alter the development of the project. In such a case, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal prior to determining its classification. Where the applicant proposes to participate with other parties in the ownership of a proposal and all applicants cumulatively own:

(a) Five percent or less of a project, the proposed action will not be considered a Federal action subject to this part;

(b) Thirty three and one-third percent or more of a project, the proposed action shall be treated in its usual category;

(c) More than five percent but less than 33⅓ percent of a project, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal. Consideration shall be given to such factors as:

(1) Whether construction would be completed regardless of RUS financial assistance or approval;

(2) The stage of planning and construction;

(3) Total applicant participation;

(4) Participation percentage of each utility; and

(5) Managerial arrangements and contractual provisions.

§ 1794.21 Categorically excluded proposals without an ER.

(a) *General.* Certain types of action taken by RUS do not normally require an ER. Proposed actions within this classification are:

(1) The issuance of bulletins and information publications that do not concern environmental matters or substantial facility design, construction, or maintenance practices;

(2) Procurement activities related to the operation of RUS; and

(3) Personnel and administrative actions.

(b) *Electric and Telecommunications Programs.* Applications for financial assistance for the types of proposed actions listed below, normally do not require the submission of an ER. These types of actions are subject to the requirements of § 1794.31. Applicants shall sufficiently describe all proposed actions so their proper classification can be determined. Detailed description shall be provided for those proposed actions so noted. Proposed actions within this classification are:

(1) Purchase of land where use shall remain unchanged, or the purchase of existing water rights where no associated construction is involved;

(2) Additional or substitute financial assistance for proposed actions which have previously received environmental review and approval from the RUS, provided the scope of the proposal and environmental considerations have not changed;

(3) Rehabilitation or reconstruction of transportation facilities within existing rights-of-way (ROW) or generating facility sites where there is no substantial increase in use. A description of the rehabilitation or reconstruction shall be provided to RUS;

(4) Changes or additions to microwave sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare). A description of the additions or changes and the area to be impacted by the expansion shall be provided to RUS;

(5) Internal modifications or equipment additions (*e.g.*, computer facilities, relocating interior walls) to structures or buildings;

(6) Internal or minor external changes to electric generating or fuel processing facilities and related support structures where there is negligible impact on the outside environment. A description of the changes shall be provided to RUS;

(7) Ordinary maintenance or replacement of equipment or small structures (*e.g.*, line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites);

(8) The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site;

(9) SCADA and energy management systems involving no new external construction;

(10) Testing or monitoring work (*e.g.*, soil or rock core sampling, monitoring wells, air monitoring;

(11) Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed;

(12) Construction of electric power lines within the fenced area of an existing substation, switching station, or within the boundaries of an electric generating facility site. A description of the facilities to be constructed shall be provided to RUS;

(13) Contracts for certain items of equipment which are part of a proposed action for which RUS is preparing an EA or EIS, and which meet the limitations on actions during the NEPA process as established in 40 CFR 1506.1(d) and contained in § 1794.17 (*e.g.*, long lead time items such as turbines, boilers, or substation transformers);

(14) Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the applicant to relocate the lines either within or adjacent to the new road or highway easement or right-of-way. A description of the facilities to be constructed shall be provided to RUS;

(15) Phase or voltage conversions, reconductoring or upgrading of existing electric distribution lines, or telecommunication facilities. A description of the facilities to be constructed shall be provided to RUS;

(16) Construction of new power lines, substations, or telecommunications facilities on previously disturbed industrial or commercial, where the applicant has no control over the location of the new facilities. Related off-site facilities would be treated in their normal category. A description of the facilities to be constructed shall be provided to RUS;

(17) Participation by an applicant(s) in any proposed action where total applicant financial participation will be five percent or less;

(18) Purchase of existing facilities or a portion thereof where use or operation will remain unchanged and which presently are in compliance with environmental laws and regulations. A description of the facilities to be purchased along with a certification from the utility owner that the facilities are in compliance with applicable environmental laws and regulations shall be provided to RUS;

(19) Additional bulk commodity storage (*e.g.*, coal, fuel oil, limestone) within existing generating station boundaries. A certification attesting to the current state of compliance of the existing facilities and a description of the facilities to be added shall be provided to RUS;

(20) Proposals designed to reduce the amount of pollutants released into the environment (*e.g.*, precipitators, baghouse or scrubber installations, coal washing equipment) which will have no other environmental impact outside the existing facility site. A description of the facilities to be constructed shall be provided to RUS;

(21) Construction of standby diesel electric generators one megawatt or less and associated facilities, for the primary purpose of providing emergency power, at an existing applicant headquarters or district office, telecommunications switching or multiplexing site, or an industrial facility served by the applicant. A description of the facilities to be constructed shall be provided to RUS;

(22) Construction of onsite facilities designed for the transfer of ash, scrubber wastes, and other byproducts from coal-fired electric generating stations for recycling or storage at an existing coal mine (surface or underground). A description of the facilities to be constructed shall be provided to RUS;

(23) Changes or additions to an existing water well system, including new water supply wells and associated pipelines within the boundaries of an existing well field or generating station site. A description of the changes or additions shall be provided; and

(24) Repowering or uprating of an existing unit(s) at a fossil-fueled generating station that does not include the substitution of one fuel combustion technology with another.

(c) *Water and Waste Program.* Applications for financial assistance for certain proposed actions do not normally require the submission of an ER. These types of actions are subject to the classification requirements of § 1794.31. Proposed actions within this classification are:

(1) Management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities;

(2) Proposed actions that primarily involve the purchase and installation of office equipment or motorized vehicles;

(3) The award of financial assistance for technical assistance, planning purposes, environmental analysis, management studies, or feasibility studies; and

(4) Loan closing and service activities that do not alter the purpose, operation, location, or design of the proposal as originally approved, such as subordinations, and amendments and revisions to approved actions, and the provision of additional financial assistance for cost overruns.

§ 1794.22 Categorically excluded proposals requiring an ER.

(a) *Electric and Telecommunications Programs.* Applications for financial assistance for the types of proposed actions listed herein normally require the submission of an ER and are subject to the requirements of § 1794.32. In order to provide for extraordinary circumstances, RUS may require development of an ER for proposals listed in § 1794.21(b). Proposed actions within this classification are:

(1) Construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

(i) Less that 69 kilovolts (kV);

(ii) Less than 230 kV if no more than 25 miles (40.2 kilometers) of line are involved; or

(iii) 230 kV or greater involving no more than three miles (4.8 kilometers) of line;

(2) Construction of buried and aerial telecommunications lines, cables, and related facilities;

(3) Construction of microwave facilities, SCADA, and energy management systems involving no more than five acres (2 hectares) of physical disturbance at any single site;

(4) Construction of cooperative or company headquarters, maintenance facilities, or other buildings involving no more than 10 acres (4 hectares) of physical disturbance or fenced property;

(5) Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same right-of-way (ROW). Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction;

(6) Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property;

(7) Construction of substations, switching stations, or telecommunications switching or

multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property;

(8) Construction of diesel electric generating facilities of five megawatts (MW) (nameplate rating) or less either at an existing generation or substation site. This category also applies to a diesel electric generating facility of five MW or less that is located at or adjacent to an existing landfill site and supplied with refuse derived fuel. All new associated facilities and related electric power lines shall be covered in the ER;

(9) Additions to or the replacement of existing generating units at a hydroelectric facility or dam which will result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the ER;

(10) Construction of a battery energy storage system at an existing generating station or substation site;

(11) Proposals designed or associated with facilities that will reduce the amount of pollutants released into the environment which will not have significant environmental impacts outside of the existing facility site; and

(12) Construction of new water supply wells and associated pipelines not located within the boundaries of an existing well field or generating station site.

(b) *Water and Waste Program*. For certain proposed actions, applications for financial assistance normally require the submittal of an ER as part of the PER. These types of actions are subject to the requirements of § 1794.32. Proposed actions within this classification are:

(1) Rehabilitation of existing facilities, functional replacement or rehabilitation of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities, including but not limited to, replacement of utilities such as water or sewer lines and appurtenances for existing users with modest or moderate growth potential, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements;

(2) Facility improvements to meet current needs with a modest change in use, size, capacity, purpose or location from the original facility. The proposed action must be designed for predominantly residential use with other new or expanded users being small-scale, commercial enterprises having limited secondary impacts;

(3) Construction of new facilities that are designed to serve populations less than 500 EDU in size with modest growth potential. The proposed action must be designed for predominantly residential use with other new or expanded users being small-scale, commercial enterprises having limited secondary impacts and must be located within the existing service area of the facility;

(4) The extension, enlargement or construction of interceptors, collection, transmission or distribution lines within a one-mile (1.6 kilometer) limit from existing service areas estimated from any boundary listed as follows:

(i) The corporate limits of the community being served;

(ii) If there are developed areas immediately contiguous to the corporate limits of a community, the limits of these developed areas; or

(iii) If an unincorporated area is to be served, the limits of the developed areas;

(5) Actions described in § 1794.21(c)(4) which alter the purpose, operation, location, or design of the proposed action as originally approved;

(6) Installation of new water supply wells or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection; and

(7) The lease or disposal of real property by RUS which may result in a change in use of the real property in the reasonably foreseeable future and such change is equivalent in magnitude or type as described above.

(c) *Specialized criteria for not granting a CE for Water and Waste Projects.* An EA must be prepared if a proposed action normally classified as a CE meets any of the following:

(1) The facilities to be provided will either create a new or relocate an existing discharge to surface or ground waters;

(2) The facilities will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters; or

(3) The facilities would provide capacity to serve a population greater than 500 EDUs or a 30 percent increase in the existing population whichever is larger.

§ 1794.23 Proposals normally requiring an EA.

RUS will normally prepare an EA for all proposed actions which are neither categorical exclusions (§§ 1794.21 and 1794.22) nor normally requiring an EIS (§ 1794.25). For certain actions within this class, scoping and document procedures contained in §§ 1794.50 through 1794.54 shall be followed (see § 1794.24). The following are proposed actions which normally require an EA and shall be subject to the requirements of §§ 1794.40 through 1794.44.

(a) *General.* Issuance or modification of RUS regulations concerning environmental matters.

(b) *Telecommunications and Water and Waste Programs.* An EA shall be prepared for applications for financial assistance for all proposed actions not specifically defined as a CE or otherwise specifically categorized by the Administrator on a case-by-case basis.

(c) *Electric Program*. Applications for financial assistance for certain proposed actions normally require the preparation of an EA. Proposed actions falling within this classification are:

(1) Construction of combustion turbine or diesel generating facilities of 50 MW (nameplate rating) or less at a new site (no existing generating capacity) except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(2) Construction of combustion turbine or diesel generating facilities of 100 MW (nameplate rating) or less at an existing generating site, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(3) Construction of any other type of new electric generating facilities of 10 MW (nameplate rating) or less. All new associated facilities and related electric power lines shall be covered in the EA;

(4) Repowering or uprating of an existing unit(s) at a fossil-fueled generating station where the existing fuel combustion technology of the affected unit(s) is substituted for another (*e.g.*, coal or oil-fired boiler is converted to a fluidized bed boiler or replaced with a combustion turbine unit);

(5) Installation of new generating units at an existing hydroelectric facility or dam, or the replacement of existing generating units at a hydroelectric facility or dam which will result in a change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the EA;

(6) A new drilling operation or the expansion of a mining or drilling operation;

(7) Purchase of existing facilities or a portion thereof which are presently in violation of Federal, State, or local environmental laws or regulations;

(8) Construction of cooperative headquarters, maintenance, and equipment storage facilities involving more than 10 acres (4 hectares) of physical disturbance or fenced property;

(9) The construction of electric power lines and related facilities designed for and capable of operation at a nominal voltage of 230 kV or more involving more than three miles (4.8 kilometers) but not more than 25 miles (40 kilometers) of line;

(10) The construction of electric power lines and related facilities designed for or capable of operation at a nominal voltage of 69 kV or more but less than 230 kV where more than 25 miles (40 kilometers) of power line are involved;

(11) The construction of substations or switching stations requiring greater than five acres (2 hectares) but not more than 10 acres (4 hectares) of new physical disturbance at a single site; and

(12) Construction of facilities designed for the transfer and storage of ash, scrubber wastes, and other byproducts from coal-fired electric generating stations that will be located beyond the existing facility site boundaries.

§ 1794.24 Proposals normally requiring an EA with scoping.

(a) *Electric Program*. Applications for financial assistance for certain proposed actions require the use of a scoping procedure in the development of the EA. These types of actions are subject to the requirements of §§ 1794.50—1794.54. Proposed actions falling within this classification are:

(1) The construction of electric power lines and related facilities designed for and capable of operation at a nominal voltage of 230 kV or more where more than 25 miles (40 kilometers) of power line are involved;

(2) The construction of substations and switching stations require new physical disturbance or fencing of more than 10 acres (4 hectares) at any one site; and

(3) Construction of combustion turbines and diesel generators of more than 50 MW at a new site or more than 100 MW at an existing site; and the construction of any other type of electric generating facility of more than 10 MW but not more than 50 MW (nameplate rating). All new associated facilities and related electric power lines shall be covered in any EA or EIS that is prepared.

(b) *Telecommunications and Water and Waste Programs.* There are no actions normally falling within this classification.

§ 1794.25 Proposals normally requiring an EIS.

Applications for financial assistance for certain proposed actions that may significantly affect the quality of the human environment shall require the preparation of an EIS.

(a) *Electric Program*. An EIS will normally be required in connection with proposed actions involving the following types of facilities:

(1) New electric generating facilities of more than 50 MW (nameplate rating) other than diesel generators or combustion turbines. All new associated facilities and related electric power lines shall be covered in the EIS; and

(2) A new mining operation when the applicants have effective control (*e.g.*, dedicated mine or purchase of a substantial portion of the mining equipment).

(b) Proposals listed above are subject to the requirements of §§ 1794.60, 1794.61, 1794.63, and 1794.64. Preparation of a supplemental draft or final EIS in accordance with 40 CFR 1502.9 shall be subject to the requirements of §§ 1794.62 and 1794.64.

(c) *Telecommunications and Water and Waste Programs.* No groups or sets of proposed actions normally require the preparation of an EIS. The environmental review process, as described in this part, shall be used to identify those proposed actions for which the preparation of an EIS is necessary. If an EIS is required, RUS shall proceed directly to its preparation. Prior completion of an EA is not mandatory.

§§ 1794.26–1794.29 [Reserved]

Subpart D—Procedure for Categorical Exclusions

§ 1794.30 General.

The procedures of this subpart which apply to proposed actions classified as CE's in §§ 1794.21 and 1794.22 provide RUS with information necessary to determine if the proposed action meets the criteria for a CE. Where, because of extraordinary circumstances, a proposed action may have a significant effect on the quality of the human environment, RUS may require additional environmental documentation.

§ 1794.31 Classification.

(a) *Electric and Telecommunications Programs.* RUS will normally determine the proper environmental classification of projects based on its evaluation of the project description set forth in the construction work plan or loan design which the applicant is required to submit with its application for financial assistance. Each project must be sufficiently described to ensure its proper classification. RUS may require the applicant to develop detailed descriptions where appropriate.

(b) *Water and Waste Program*. RUS will normally determine the proper environmental classification for projects based on its evaluation of the preliminary planning and design information. This information is developed by the applicant under the guidance and supervision of the State Environmental Coordinator.

§ 1794.32 Environmental report.

(a) For proposed actions listed in §§ 1794.21(a) and 1794.21(b), the applicant is normally not required to submit an ER.

(b) For proposed actions listed in §§ 1794.22(a) and 1794.22(b), the applicant shall normally submit an ER or its equivalent. The applicant may be required to publish public notices and provide evidence of such with its ER if the proposed action is located in, impacts on, or converts important land resources.

§ 1794.33 Agency action.

RUS may act on an application for financial assistance upon determining, based on the review of documents as set forth above and such additional information as RUS deems necessary, that the project is categorically excluded.

§§ 1794.34–1794.39 [Reserved]

Subpart E—Procedure for Environmental Assessments

§ 1794.40 General.

This subpart applies to proposed actions described in § 1794.23. Where appropriate to carry out the purposes of NEPA, RUS may impose, on a case-by-case basis, additional requirements associated with the preparation of an EA. If at any point in the preparation of an EA, RUS determines that the proposed action will have a significant impact on the environment, the preparation of an EIS shall be required and the procedures in subpart G of this part shall be followed.

§ 1794.41 Document requirements.

Applicants will provide an ER in accordance with the appropriate guidance documents referenced in § 1794.8. After RUS has evaluated the ER and has determined the ER adequately addresses all applicable environmental issues, the ER will normally serve as RUS' EA. RUS will take responsibility for the scope and content of an EA.

§ 1794.42 Notice of availability.

(a) Prior to RUS making a finding in accordance with § 1794.43 and upon RUS' authorization and guidance, the applicant shall have a notice published which announces the availability of the EA and solicits public comments on the EA.

(b) *Electric and Telecommunications Programs.* RUS shall have a notice published in the **Federal Register** which announces the availability of the EA and solicits public comments on the EA.

§ 1794.43 Agency finding.

(a) If RUS finds, based on an EA that the proposed action will not have a significant impact on the human environment, RUS will prepare a FONSI. Upon authorization of RUS, the applicant shall have a notice published which informs the public of the RUS' finding and the availability of the EA and FONSI. The notice shall be prepared and published in accordance with RUS guidance.

(b) *Electric and Telecommunications Programs.* RUS shall have a notice published in the **Federal Register** that announces the availability of the EA and FONSI.

§ 1794.44 Timing of agency action.

RUS may take its final action on proposed actions requiring an EA (§ 1794.23) at any time after publication of the RUS and applicant notices that a FONSI has been made.

§§ 1794.45–1794.49 [Reserved]

Subpart F—Procedure for Environmental Assessments With Scoping

§ 1794.50 Normal sequence.

For proposed actions covered by § 1794.24 and other actions determined by the Administrator to require an EA with Scoping, RUS and the applicant will follow the same procedures for scoping and the requirements for notices and documents as for proposed actions normally requiring an EIS through the point at which the Environmental Impact Assessment (EIA) is submitted (see § 1794.54). After the EIA has been submitted, RUS will make a judgment to utilize the EIA as its EA and issue a FONSI or prepare an EIS.

§ 1794.51 Preparation for scoping.

(a) As soon as practicable after RUS and the applicant have developed a schedule for the environmental review process, RUS will have its notice of intent to prepare an EA or EIS published in the **Federal Register** (see 40 CFR 1508.22). The applicant shall have published, in a timely manner, a notice similar to RUS' notice.

(b) As part of the early planning, the applicant should consult with appropriate Federal, State, and local agencies to inform them of the proposed action, identify permits and approvals which must be obtained, and administrative procedures which must be followed.

(c) Before formal scoping is initiated, RUS will require the applicant to submit an Alternative Evaluation Study and either a Siting Study (generation) or a Macro-Corridor Study (transmission lines).

(d) The applicant is encouraged to hold public information meetings in the general location of the proposed action and any reasonable alternatives when such applicant meetings will make the scoping process more meaningful. A written summary of the comments made at such meetings must be submitted to RUS as soon as practicable after the meetings.

§ 1794.52 Scoping meetings.

(a) Both RUS and the applicant shall have a notice published which announces a public scoping meeting is to be conducted, either in conjunction with the notice of intent or as a separate notice.

(b) The RUS notice shall be published in the **Federal Register** at least 14 days prior to the meeting(s). The applicant's notice shall be published in a newspaper at least 10 days prior to the meeting(s). Other forms of media may also be used by the applicant to notice the meetings.

(c) Where an environmental document is the subject of the hearing or meeting, that document will be made available to the public at least 10 days in advance of the meeting.

(d) The scoping meeting(s) will be held in the area of the proposed action at such places as RUS determines will best afford an opportunity for public involvement. Any person or representative of an organization, or government body desiring to make a statement at the meeting may make such statement in writing or orally. The format of the meeting may be one of two styles. It can either be of the traditional style which features formal presentations followed by a comment period, or the open house style in which attendees are able to individually obtain information on topics or issues of interest within an established time period. A transcript will be made of the scoping meeting.

(e) As soon as practicable after the scoping meeting(s), RUS, as lead agency, shall determine the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review. RUS will develop a proposed scope for further environmental study and review. RUS will send a copy of this proposed scope to cooperating agencies and the applicant, and allow recipients 30 days to comment on the scope's adequacy and emphasis. After expiration of the 30 day period, RUS shall provide written guidance to the applicant concerning the scope of environmental study to be performed and information to be gathered.

§ 1794.53 Environmental impact analysis.

(a) After scoping procedures have been completed, RUS will require the applicant to develop and submit an EIA. The EIA shall be prepared under the supervision and guidance of the RUS staff and RUS will evaluate and be responsible for the accuracy of all information contained therein.

(b) The EIA will normally serve as the RUS EA. The EIA can also serve as the basis for an EIS, and under such circumstances will be made an appendix to the EIS. After RUS has reviewed and found the EIA to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the EIA to satisfy RUS' distribution plan.

(c) The EIA shall include a summary of the construction and operation monitoring and mitigation measures for the proposed action. These measures may be revised as appropriate in response to comments and other information. and shall be incorporated by summary or reference into the FONSI or ROD.

§ 1794.54 Agency determination.

Following the scoping process and the development of a satisfactory EA, RUS shall make a judgment as to whether or not the proposed action is a major Federal action significantly affecting the quality of the human environment. If a significant effect is evident, RUS will continue with the procedures in subpart G of this part. If a significant effect is not evident, RUS will proceed in accordance with §§ 1794.42 through 1794.44.

§§ 1794.55–1794.59 [Reserved]

Subpart G—Procedure for Environmental Impact Statements

§ 1794.60 Normal sequence.

For proposed actions requiring an EIS (see § 1794.25), the NEPA process shall proceed in the same manner as for proposed actions requiring an EA with

scoping through the point at which the scoping process is completed (see § 1794.52).

§ 1794.61 Environmental impact statement.

(a) *General.* An EIS shall be prepared in accordance with 40 CFR part 1502. The draft and final EIS may be prepared by a third-party consultant selected by RUS and funded by the applicant.

(1) After a draft or final EIS has been prepared, RUS and the applicant shall concurrently have a notice of availability for the document published. The time period allowed for review will be a minimum of 45 days for a draft EIS and 30 days for a final EIS. This period is measured from the date that the U.S. Environmental Protection Agency (EPA) publishes a notice in the **Federal Register** in accordance with 40 CFR 1506.10.

(2) In addition to circulation required by 40 CFR 1502.19, the draft and final EIS (or summaries thereof, at RUS' discretion) shall be circulated to the appropriate state, regional, and metropolitan clearinghouses.

(3) Where a final EIS does not require substantial changes from the draft EIS, RUS may document required changes through errata sheets, insertion pages, and revised sections to be incorporated into the draft EIS. In such cases, RUS shall circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as its final EIS. RUS will not circulate the draft EIS again, although the draft EIS will be provided if requested within 30 days of publication of notice of availability of the final EIS.

(b) *Electric Program*. Where an EIA has been prepared by the applicant or its consultant, RUS will develop its draft and final EIS from the EIA. An EIA will not be required if the draft and final EIS is prepared by a third-party consultant.

§ 1794.62 Supplemental EIS.

(a) A supplement to a draft or final EIS shall be prepared, circulated, and given notice by RUS and the applicant in the same manner (exclusive of scoping) as a draft and final EIS (see § 1794.61).

(b) Normally RUS and the applicant will have published notices of intent to prepare a supplement to a final EIS in those cases where a ROD has already been issued.

(c) RUS, at its discretion, may issue an information supplement to a final EIS where RUS determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). RUS and the applicant shall concurrently have a notice of availability published. The notice requirements shall be the same as for a final EIS and the information supplement shall be circulated in the same manner as a final EIS. RUS shall take no final action on any proposed modification discussed in the information supplement until 30 days after the RUS notice of availability or the applicant's notice is published, whichever occurs later.

§ 1794.63 Record of decision.

(a) Upon completion of the review period for a final EIS, RUS will have its ROD published in accordance with 40 CFR 1505.2 and 1506.10.

(b) Separate RUS and applicant notices shall be published concurrently. The notices shall summarize the RUS decision and announce the availability of the ROD. Copies of the ROD will be made available upon request from the point of contact identified in the notice.

§ 1794.64 Timing of agency action.

(a) RUS may take its final action or execute commitments on proposed actions requiring an EIS or Supplemental EIS at any time after the ROD has been published.

(b) For budgetary purposes some financial assistance may be approved conditionally with a stipulation that no funds shall be advanced until a ROD has been prepared .

§§ 1794.65–1794.69 [Reserved]

Subpart H—Adoption of Environmental Documents.

§ 1794.70 General.

This subpart covers the adoption of environmental documents prepared by other Federal agencies. Where applicants participate in proposed actions for which an EA or EIS has been prepared by or for another Federal agency, RUS may adopt the existing EA or EIS in accordance with 40 CFR 1506.3.

§ 1794.71 Adoption of an EA.

RUS may adopt a Federal EA or EIS or a portion thereof as its EA. RUS shall make the EA available and assure that notice is provided in the same manner as if RUS had prepared the EA.

§ 1794.72 Adoption of an EIS.

(a) Where RUS determines that an existing Federal EIS requires additional information to meet the standards for an adequate statement for RUS' proposed action, RUS may adopt all or a portion of the EIS as a part of its draft EIS. The circulation and notice provisions for a draft and final EIS (see § 1794.61) apply.

(b) If RUS was not a cooperating agency but determines that another Federal agency's EIS is adequate, RUS shall adopt the EIS as its final EIS. RUS and the applicant shall have separate notices published advising of RUS' adoption of the EIS and independent determination of its adequacy.

(c) If the adopted EIS is generally available and meets the Agency's standards, RUS shall have a public notice published informing the public of its action and availability of the EIS to interested parties upon request. If the adopted EIS is not generally available, RUS shall have a public notice published as above and will circulate copies in accordance with 40 CFR 1502.19 and 1506.3.

§ 1794.73 Timing of agency action.

Where RUS has adopted another agency's environmental documents, the timing of the action shall be subject to the same requirements as if RUS had prepared the required EA or EIS.

§§ 1794.74–1794.79 [Reserved]

Dated: November 12, 1997.

Inga Smulkstys,

Deputy Under Secretary, Rural Development.

[FR Doc. 97–30341 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–103330–97]

RIN 1545–AV08

IRS Adoption Taxpayer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 6109 relating to taxpayer identifying numbers. The temporary regulations provide rules for obtaining and using IRS adoption taxpayer identification numbers. The temporary regulations assist individuals who are in the process of adopting children and wish to claim certain tax benefits with respect to these children. The text of those temporary regulations also serves as the text of these proposed

regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by February 23, 1998. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 4, 1998, at 10:00 a.m., must be received by February 11, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103330–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103330–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

Taxpayers may also submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael L. Gompertz, (202) 622–4910; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 23, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, whether the collection will have a practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 301.6109–3T(c). This information is required by the IRS to assign IRS adoption taxpayer identification numbers (ATINs) to children who are in the process of being adopted. Unless an ATIN is assigned to a prospective adoptive child, the prospective adoptive parent cannot claim a dependency exemption for the child under section 151, a dependent care credit for the child under section 21, or, for taxable years beginning after December 31, 1997, a child tax credit under section 24. The collection of information in § 301.6109–3T is thus required to obtain a benefit. The likely respondents are individuals.

The collection of information in § 301.6109–3T is satisfied by including the required information on Form W–7A or other form as may be prescribed by the IRS to apply for an ATIN. The burden for this requirement is reflected in the burden estimate for Form W–7A.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Regulations on Procedure and Administration (26 CFR part 301) relating to section 6109. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, March 4, 1998, at 10:00 a.m. in Room 2615. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by February 23, 1998 and submit requests to speak and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 11, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Michael L. Gompertz, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes,

Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6109–1 also issued under 26 U.S.C. 6109;

Section 301.6109–3 also issued under 26 U.S.C. 6109; * * *

Par. 2. Section 301.6109–1 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) to read as follows:

§ 301.6109–1 Identifying numbers.

(a) * * * (1) *Taxpayer identifying numbers*—(i) [The text of proposed paragraph (a)(1)(i) is the same as the text of § 301.6109–1T(a)(1)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of proposed paragraph (a)(1)(ii) introductory text is the same as the text of § 301.6109–1T(a)(1)(ii) introductory text published elsewhere in this issue of the **Federal Register**].

(A) and (B) [The text of proposed paragraphs (a)(1)(ii)(A) and (B) are the same as the text of § 301.6109–1T(a)(1)(ii)(A) and (B) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 301.6109–3 is added to read as follows:

§ 301.6109–3 IRS adoption taxpayer identification numbers.

[The text of this proposed section is the same as the text of § 301.6109–3T published elsewhere in this issue of the **Federal Register**].

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–30549 Filed 11–21–97; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Delivery of Mail to a Commercial Mail Receiving Agency

AGENCY: Postal Service.

ACTION: Notice of proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the **Federal Register** (62 FR 45366–45368) on August 27, 1997, a proposal to amend section D042.2.5 through D042.2.7 of the Domestic Mail Manual to update and clarify procedures for delivery of an addressee's mail to a Commercial Mail Receiving Agency (CMRA). The proposal provides procedures for registration to act as a CMRA; an addressee to request mail delivery to a CMRA; and in delivery of the mail to a CMRA. The Postal Service requested comments by September 26, 1997. Due to several requests received for additional time, the Postal Service is extending the comment period to December 24, 1997.

DATES: Comments on the proposed rule change must be received on or before December 24, 1997.

ADDRESSES: Written comments should be mailed to Manager, Delivery, Operations Support, U.S. Postal Service, 475 L'Enfant Plaza SW Room 7142, Washington, DC 20260–2802. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Roy E. Gamble, (202) 268–3197.

SUPPLEMENTARY INFORMATION: Representatives of the CMRA industry interested in the proposed update and clarification of procedures for delivery of an addressee's mail to a CMRA, has requested an extension of time to file comments regarding the proposed rules published on August 27, 1997. Central to this request is an asserted oversight by the industry organizations and CMRA operators of the **Federal Register** publication of August 27. The Postal Service believes that the public interest will be served by the fullest practicable exposition of facts concerning this issue and accordingly extends the time for comments until December 24, 1997.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–30828 Filed 11–21–97; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC67

Disaster Assistance; Public Assistance Program Appeals; Hazard Mitigation Grant Program Appeals

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the procedure for the review and disposition of appeals related to Public Assistance grants and the Hazard Mitigation Grant Program (HMGP). The rule would reduce from three to one the number of appeals allowed, would reduce delays in final resolution of appeals, and would make new provisions for reimbursing administrative costs for preparing and processing appeals.

DATES: We invite your comments on this proposed rule, which may be submitted on or before January 23, 1998.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Regarding HMGP appeals, Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3619, (facsimile) (202) 646–3104; regarding Public Assistance appeals, Melissa M. Howard, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3053, facsimile (202) 646–3304.

SUPPLEMENTARY INFORMATION: Under section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5189a, any decision regarding eligibility or amount of assistance may be appealed. Currently FEMA allows three appeal levels, respectively, to the Regional Director, the Associate Director, and to the Director.

This proposed rule would reduce from three to one the number of appeals allowed to be taken by an applicant. The authority for appeal decisions will rest with the Regional Director, who will consult with FEMA Headquarters on all potential appeal denials when the amount in question is $1,000,000 or more in Federal funds.

This proposed change would support FEMA policy that the Regional Director is responsible for final decisions on all Public Assistance and HMGP funding. The Regional Director's appeal determination would be the Agency's final position on the matter.

The intent of this change is to reduce the significant amount of time and associated costs incurred by FEMA, grantees, and subgrantees to resolve appeal issues. Given the timeframes allowed, the current process can take up

to two years to make a final decision by the Director of the Agency. This proposed change would provide applicants with a final resolution sooner than previously. All provisions for fair and impartial consideration required by the Stafford Act would be maintained.

The rule would be effective for all appeals made on or after the effective date of the rule. Appeals pending from a decision of a Regional Director or an Associate Director/ Executive Associate Director before the effective date of the rule may be appealed to the next higher appeal level in accordance with § § 202.206 and 206.440 as they existed before the effective date of this rule. The decision of the FEMA official at the next higher appeal level would be final. For example, if a Regional Director had *not* +made a decision on an appeal pending before the effective date of the rule the appeal would be decided in accordance with the new rule, and the decision of the Regional Director would be final. If a Regional Director had made a decision before the effective date of the rule, the decision could be appealed to the Associate Director or Executive Associate Director, whose decision would be final. If the appeal had been decided at the Associate Director level, the decision could be appealed to the Director, whose decision would be final.

The proposed rule also provides that grantees and subgrantees would be responsible for separately tracking and accounting for all costs associated with preparing and processing appeals. FEMA would reimburse grantees' and subgrantees' administrative costs for preparing and processing appeals only when an appeal is decided in favor of the applicant. This change is proposed in the interest of responsible use of tax dollars, and in the face of an increasing number of appeals that have been identified as frivolous or without merit.

This proposed rule supersedes the proposed Public Assistance appeal procedure published on October 24, 1996, 61 FR 55122–55123.

National Environmental Policy Act

This proposed rule is categorically excluded from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. No environmental impact statement or environmental assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This proposed rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Regulatory Flexibility Act

The Director certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule would reduce the number of appeals that an entity might make and is expected to reduce administrative burden and compliance requirements associated with appeals. A regulatory flexibility analysis has not been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule complies with applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance.

Accordingly, 44 CFR part 206 is proposed to be amended as follows:

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.206 is revised to read as follows:

§ 206.206 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the following procedures.

(a) *Format and Content.* The applicant or subgrantee will make the appeal to the Regional Director, in writing, through the grantee. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of Appeal.* The Regional Director is the deciding official on all appeals. The Regional Director will consult with FEMA Headquarters during the review of all potential appeal denials when the amount in question is $1,000,000 or more in Federal funds.

(c) *Time Limits.* (1) Appellants must make appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Director will notify the grantee in writing as to the disposition of the appeal or of the need for additional information. A request by the Regional Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of requested additional information or the expiration of the period for providing the information, the Regional Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director will notify the grantee in writing of the disposition of the appeal.

(e) *Administrative costs of appeal.* Grantees and subgrantees must track and account for all costs associated with preparing and processing appeals. FEMA will not reimburse grantees' and subgrantees' administrative costs for preparing and processing appeals that are not decided in favor of the applicant.

(f) *Transition.* (1) This rule is effective for all appeals filed on or after [30 days

after date of publication of final rule in the **Federal Register**].

(2) Appeals pending from a decision of a Regional Director or an Associate Director/Executive Associate Director before [the effective date of the final rule] may be appealed to the next higher appeal level in accordance with 44 CFR 206.206 as it existed before [the effective date of the final rule]. The decision of the FEMA official at the next higher appeal level shall be final.

3. Section 206.440 is revised to read as follows:

§ 206.440 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the following procedures.

(a) *Format and Content.* The applicant or subgrantee will make the appeal to the Regional Director, in writing, through the grantee. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of Appeal.* The Regional Director is the deciding official on all appeals. The Regional Director will consult with FEMA Headquarters during the review of all potential appeal denials when the amount in question is $1,000,000 or more in Federal funds.

(c) *Time Limits.* (1) Appellants must make appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Director will notify the grantee in writing as to the disposition of the appeal or of the need for additional information. A request by the Regional Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of requested additional information or the expiration of the period for providing the information, the Regional Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director will notify the grantee in writing of the disposition of the appeal.

(e) *Administrative costs of appeal.* Grantees and subgrantees must track and account for all costs associated with preparing and processing appeals. FEMA will not reimburse grantees' and subgrantees' administrative costs for preparing and processing appeals that are not decided in favor of the applicant.

(f) *Transition.* (1) This rule is effective for all appeals filed on or after [30 days after date of publication of final rule in the **Federal Register**].

(2) Appeals pending from a decision of a Regional Director or an Associate Director/Executive Associate Director before [the effective date of the final rule] may be appealed to the next higher appeal level in accordance with 44 CFR 206.440 as it existed before [the effective date of the final rule]. The decision of the FEMA official at the next higher appeal level shall be final.

Dated: November 17, 1997.

James L. Witt,

Director.

[FR Doc. 97–30808 Filed 11–21–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC68

Disaster Assistance; Fire Suppression Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would simplify the fire eligibility process from three thresholds to one threshold and would change the Federal cost share to 75 percent for fire suppression assistance.

DATES: We invite comments on this proposed rule and will accept comments until January 23, 1998.

ADDRESSES: Send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) 202–646–4536.

FOR FURTHER INFORMATION CONTACT: Curtis Carleton, Chief, Community Services Branch, Federal Emergency Management Agency, 500 C Street SW., room 713, Washington, DC 20472, 202–646–4535.

SUPPLEMENTARY INFORMATION: As defined in section 420 of the Stafford Act, FEMA may provide Federal assistance to any State for fire suppression on publicly or privately owned forest or grassland if the Governor determines that the fire suppression assistance is warranted. Currently, fire suppression assistance is (1) based on a three-tiered funding system and (2) funded with the cost share for at least 70 percent of eligible costs in excess of the floor cost. This amendment is intended (1) to eliminate the three-tiered funding system and (2) to adjust the minimum Federal cost share for eligible costs to not less than 75 percent.

In 1970, the cost share structure was established with the assistance of the United States Department of Agriculture (Forest Service) and the United States Department of Interior. The structure was created before the existence of a cost share structure for any other Federal disaster assistance program. As with other disaster assistance programs, it attempted to ensure that Federal assistance supplemented State and local governmental resources and complemented other Federal and State fire programs.

Federal assistance under the current fire suppression grant is based on a three-tiered threshold system, as follows:

Three Tiered FEMA Reimbursement Approach

(1) State pays 100 percent of costs until single declared fire cost equals floor cost, and then FEMA pays 70 percent of costs in excess of floor cost for that fire and all subsequent, declared fires.

(2) If State's expenses for all fires, declared or not, exceed average State fiscal year costs, FEMA pays 70 percent of all costs for declared fires (no deduction for floor cost).

(3) If State's expenses for all fires, declared or not, exceed twice the average fiscal year costs, FEMA pays 100 percent of all costs for declared fires.

This proposed rule would simplify the three-tiered process, replacing it

with a single threshold process. The single threshold will allow Federal funding to be available when the cost of a single declared event exceeds the State's annual floor cost; the State costs greater than the floor cost will be available for funding at not less than 75 percent. Any federal fire declarations for the remainder of that calendar year will receive funding at not less than 75 percent of the costs.

This amendment would not change any provisions (e.g., eligibility, application, administrative planning, payment of claims, or appeals) in the Stafford Act nor in the fire suppression assistance regulations at 44 CFR part 206, subpart L.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 206

Disaster assistance.

Accordingly, 44 CFR Part 206 is proposed to be amended as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 is revised to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Part 206, Subpart L, Fire Suppression Assistance, is proposed to be amended by adding § 206.396 to read as follows:

§ 206.396 Federal grant assistance.

(a) *General.* This section describes the extent of Federal funding available under the State fire suppression grants as well as limitations and special procedures applicable to each.

(b) *Limitations of Federal expenditures.* Federal funding will be available when the annual floor cost is surpassed during a single federal declared event. The amount of expense greater than the floor cost will be cost shared as stated in the FEMA-State Agreement. Any Federal declared event for the remainder of that calendar year will be eligible for funding. The floor cost will be established at the beginning of each calendar year in joint consultation between the State and the United States Department of Agriculture (Forest Service).

(c) *Cost sharing.* All fire suppression costs approved under the State's grant will be subject to the cost sharing provisions established in the FEMA-State Agreement. FEMA will contribute not less than 75 percent of the costs approved for funding under the Fire Suppression Grant Program for disasters declared on or after [insert effective date of final rule]. FEMA will contribute at least 70 percent of the costs for funding for disasters declared before [insert effective date of final rule].

Dated: November 18, 1997.

James L. Witt,

Director.

[FR Doc. 97–30809 Filed 11–21–97; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 8]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This document announces the next meeting of the RSPA Negotiated Rulemaking Committee. This committee is conducting a negotiated rulemaking to develop a proposed rule on qualification of pipeline employees performing certain safety-related functions on pipelines subject to the pipeline safety regulations. The advisory committee is composed of persons who represent the interests that would be affected by the rule, such as gas pipeline operators, hazardous liquid pipeline operators, representatives of state and federal governments, labor organizations, and other interested parties.

DATES: The Committee will meet from 9:00 am to 5:00 pm on December 3–5, 1997.

ADDRESSES: The Committee will meet at the William P. Clements Building, 300 West 15th Street, Austin, TX 78701.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov) regarding the subject matter of this Notice; or the Dockets Unit, (202) 366–4453, for copies of this document or other material in the docket.

Issued in Washington, DC on November 19, 1997.

G. Tom Fortner,

Director for Compliance and State Programs.

[FR Doc. 97–30790 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971112268–7268–01; I.D. 102997E]

Fisheries of the Northeastern United States; Proposed 1998 Fishing Quotas for Atlantic Surf Clams and Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed fishing quotas for the 1998 Atlantic surf clam and ocean quahog fisheries; request for comments.

SUMMARY: NMFS proposes quotas for the Atlantic surf clam and ocean quahog fisheries for 1998. These quotas were selected from a range defined as optimum yield (OY) for each fishery and in compliance with overfishing definitions for each species. The intent of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1998.

DATES: Public comments must be received on or before December 24, 1997.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's analysis

and recommendations, including the Environmental Assessment and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis, are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790.

Send comments to: Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments—1998 Surf Clam and Ocean Quahog quotas.''

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Assistant Administrator for Fisheries, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the OY for each fishery. It is the policy of the Council that the level selected allow fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within this constraint, the quotas would be set at a level that would meet the estimated market demand.

The fishing quotas must be in compliance with overfishing definitions for each species. The overfishing definitions are fishing mortality rates of $F_{20\%}$ (20 percent of maximum spawning potential (MSP)) for surf clams and $F_{25\%}$ (25 percent of MSP) for ocean quahogs.

Surf Clams

The Council recommends a 1998 fishing quota of 2.565 million bushels for surf clams, unchanged from the 1996 and 1997 quotas. The Council staff recommended a surf clam quota of 2.565 million bushels based on management advice from the Stock Assessment Review Committee for the 22nd Northeast Regional Stock Assessment Workshop (SAW 22), which recommended no change from the 1996–97 quotas of 2.565 million bushels until a new stock assessment is available with abundance estimates based on fishery catch rate and research survey data. The results of the 1997 surf clam and ocean quahog survey will not be available for the 1998 fishery.

Ocean Quahogs

The Council recommends an ocean quahog fishing quota of 4 million bushels, a 317,000 bushel reduction from the 1997 quota of 4.317 million bushels. This quota level is the lowest possible within the range of 4 and 6 million bushels as specified in the FMP. The Council, in making this recommendation, questioned the validity of assuming that all of the Georges Bank biomass will become available to the fishery over the course of the 30-year harvest period. A notice of closure of the Georges Bank area to fishing for surf clams or ocean quahogs was published on February 1, 1991 (56 FR 3980). The closure was implemented due to the appearance of high levels of the organism responsible for paralytic shellfish poisoning (PSP). The area will remain closed until the Secretary of Commerce determines that the adverse environmental conditions caused by the PSP toxin are no longer present. In 1996, when the Council made the assumption of a reopening occurring in the Georges Bank area, it stated that additional quota reductions would be necessary in the future if demonstrable progress is not made toward a reopening of Georges Bank in the near future. The SAW 22 did not offer management advice on the ocean quahog quota. However, it noted that a 30-year supply as dictated by Council policy is possible only if the estimated biomass on Georges Bank and in areas off Southern New England and Long Island, generally too deep to be harvested with current technology, is included. Furthermore, it cautioned that this strategy implies that sustainable fishing after 30 years will be limited to recruitment and a very slow annual growth of fully recruited quahogs. Noting the SAW 22 advice, the Science and Statistical (S&S) Committee was concerned with the issue of refugia. It suggested that the Council request the next SAW for surf clams and quahogs to consider the importance of refugia to new recruitment by examining biological and economic aspects for three scenarios: No refugia, Georges Bank only, and Georges Bank and the deep offshore unfished areas. The Council adopted this recommendation and passed a motion to request the next SAW to add this to its ''Terms of Reference.''

In proposing these quotas, the Council considered the most recent available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas closed to fishing. This information was presented in a written report prepared by the Council and adopted by the Regional Administrator, Northeast Region, NMFS.

NMFS, in 1996, approved overfishing definitions for surf clams and ocean quahogs. The overfishing threshold for surf clams is a fishing mortality rate (F) of $F_{20\%}$. This translates roughly to F = 0.18 for surf clams (15.3 percent exploitation rate). The F in 1997 associated with a quota of 2.565 million bushels was approximately equal to 0.12 for all areas. The specific F associated with the 1998 surf clam quota will be able to be calculated when the new assessment is complete, but will be roughly the same as the estimated F in 1997 for all areas. The overfishing threshold for ocean quahogs is $F_{25\%}$, yielding F = 0.04 (4.3 percent exploitation rate). The 1997 ocean quahog quota yielded an F of approximately 0.032. The specific F associated with the 1998 quota will be calculated when the new assessment is complete and will be slightly less than the F in 1997 since the quota is slightly reduced. Therefore, the proposed quotas for both fisheries are below the approved overfishing threshold definitions.

At its August 1997 meeting, the Council rejected its staff recommendations of 2.565 million bushels for the 1998 surf clam quota and of 4.317 million bushels for the 1998 ocean quahog quota. Instead, the Council submitted to NMFS a surf clam quota recommendation of 2.3 million bushels, a 10-percent decrease from the 1997 surf clam quota and of 4 million bushels for ocean quahogs, a 317,000-bushel reduction from the 1997 quota of 4.317 million bushels. The recommendation to reduce the surf clam quota came as a result of testimony given by a segment of the industry in which they argued that a decline in consumer demand for surf clam products had depressed prices and increased inventories for a portion of the industry. In their argument to reduce quota, they invoked the Council's surf clam policy of ''meeting estimated demand.'' In response to the August surf clam and quahog recommendations, several industry representatives, many of whom were not present at the August meeting, protested. This group solicited the Council to reconsider the quota recommendations. In addition, letters to the Council from the New England Fishery Management Council and from a major processor also expressed concern over reducing the surf clam quota to meet the estimated demand.

The Council voted to reconsider the surf clam quota recommendation at its

September meeting. This resulted in a surf clam quota recommendation of 2.565 million bushels, as initially recommended by the Council staff and SAW 22. The ocean quahog quota recommendation remained unchanged at 4 million bushels. The rationale for the reduction in this quota is biologically based, and the recommendation was not reconsidered at the September Council meeting.

The proposed quotas for the 1998 Atlantic surf clam and ocean quahog fisheries are as follows:

Proposed 1998 SURF CLAM/Ocean QUAHOG Quotas

Fishery	1998 final quotas (bu)	1998 final quotas (hL)
Surf clam	2,565,000	1,362,000
Ocean quahog	4,000,000	2,122,000

Classification

This action is authorized by 50 CFR part 648, complies with the National Environmental Policy Act, and has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA), as part of the Regulatory Impact Review (RIR), that describes the impact the proposed specification, if adopted, would have on small entities. The proposed 1998 fishing quota for surf clams of 2.565 million bushels is unchanged from the 1996 and 1997 quotas. This quota is based on management advice from the Stock Assessment Review Committee for the 22nd Northeast Regional Stock Assessment Workshop, which recommended no change in the quotas until a new stock assessment is available with abundance estimates based on fishery catch rate and research survey data.

The proposed 1998 fishing quota for ocean quahogs of 4.000 million bushels is a 317,000 bushel reduction from the 1997 quota of 4.317 million bushels, a decrease of 7.3 percent. This Council quota recommendation reflects the lowest quota specification possible within the range of 4.000 and 6.000 million bushels specified in the fishery management plan. The Council staff recommendation for quahogs was to maintain the 1997 quota of 4.317 million bushels. The Science and Statistics and the Surf Clam and Ocean Quahog Committees of the Council both endorsed the staff recommendation. However, the Council's rationale for the reduction of the ocean quahog quota is biologically based and involves the conservation of the resource and preservation of the fishery.

All of the 56 vessels participating in the surf clam and ocean quahog fisheries in 1996 are small entities. Twenty fished exclusively for surf clams, 14 fished for surf clams and ocean quahogs, and 22 fished exclusively for ocean quahogs. The proposed quota for the ocean quahog fishery for 1998 is 7.3 percent less than the quotas for both 1996 and 1997. Because 22 of the 36 vessels participating in the ocean quahog fishery (61 percent) harvest ocean quahog only, it is assumed that most or all of those vessels will have a reduction of 5 percent or more in ex-vessel revenues in 1998 compared to 1996, the most recent year for which data are complete. Meanwhile, the analyses indicate that no vessels will cease operations and compliance costs will not increase total costs of production of more than 5 percent for 20 percent or more of the affected small entities as a result of the proposed specifications. A copy of the RIR/IRFA is available from the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 18, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–30805 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971110265–7265–01; I.D. 101797A]

RIN: 0648-AJ98

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery Off Alaska; Change in Season Dates

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to change the dates of the scallop fishing season for Registration Area D (Yakutat) and Registration Area E (Prince William Sound), and Registration Area H exclusive of the Kamishak District. The new fishing season would begin on July 1 and end on February 15 of the following year. The intended effect of this action is to consolidate the scallop fishing seasons in Alaska in the summer months to improve vessel safety and product quality, and to maintain consistency between Federal and State of Alaska fishing season regulations. This action is necessary to promote the conservation and management objectives of the Fishery Management Plan for the Scallop Fishery off Alaska (FMP).

DATES: Comments must be received by December 9, 1997.

ADDRESSES: Comments on the proposed rule must be sent to the Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Copies of the Environmental Assessment/ Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Management Authority

The scallop fishery in the exclusive economic zone (EEZ) off Alaska is managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act and approved by NMFS on July 26, 1995. Regulations implementing the FMP are set out at 50 CFR part 679. General regulations that also affect fishing in the EEZ are set out at 50 CFR part 600. Amendment 1 to the FMP established a cooperative State-Federal management regime under which each management action by the State of Alaska (State) is mirrored by a parallel Federal management action. The purpose of this cooperative management regime is to give primary management responsibility to the State while preventing unregulated fishing in Federal waters.

In March 1997, the Alaska State Board of Fisheries (Board) approved an industry proposal to change the scallop season dates in the Yakutat and Prince William Sound Registration Areas. Previously, the scallop fishery in those areas opened on January 10 and closed on June 30 of each year. The Board's action changes State regulations by specifying a season opening of July 1 and a closure of February 15 of the following year. The Board recommended that a parallel season change be made in Federal regulations to prevent conflicting regulations at the State and Federal levels. The following two reasons were cited in the Board's

decision to move the scallop season dates for these areas.

Changing circumstances in the scallop fishery. The historic reason for a January opening in the Yakutat and Prince William Sound Registration Areas no longer exists under the current management regime. Prior to 1993, the Alaska Department of Fish and Game (ADF&G) did not establish Guideline Harvest Levels (GHLs) for each registration area. Instead, winter and summer openings were used in different areas to spread effort and to mirror the historic pattern of scallop fishing throughout the State. However, under Amendment 1 to the FMP, approved July 10, 1996, ADF&G and NMFS now establish GHLs or total allowable catch (TAC) amounts for each scallop registration area. As a consequence, the January openings for Yakutat and Prince William Sound are no longer necessary to distribute effort between registration areas because the separate TACs established for each registration area accomplish the same objective.

Safety issues. At its March 1997 meeting, the Board received extensive testimony from scallop fishermen who reported that January is an unsafe time to fish for scallops in the smaller vessels that compose most of the fleet. Fishing conditions are much safer in July than in January when severe winter storms are common in the Gulf of Alaska. Historically, the summer fishery in the western registration areas would extend into the fall and winter months. Vessel operators would typically begin scallop fishing in the Bering Sea and Alaskan Peninsula during July and move to the more sheltered waters of Yakutat and Prince William Sound in the winter. However, in recent years, TAC limits and/or crab bycatch limits are reached relatively quickly in the western registration areas. No reason exists to delay the Yakutat and Prince William Sound scallop fisheries until January when the worst winter weather occurs.

Federal response to Board action. The Board has already amended State regulations to establish a scallop fishing season of July 1 through February 15 for the areas in question. Therefore, the goal under Amendment 1 to the FMP to maintain consistency between State and Federal scallop regulations requires NMFS to implement a parallel change in Federal regulations. This revision to Federal regulations is necessary to prevent conflicting fishing seasons at the State and Federal level and the resulting disruption to industry. If no action is taken, cooperative State-Federal management of the fishery would be impossible. State waters in Prince William Sound and Yakutat would open on July 1 while Federal waters would open on January 10. Furthermore, ADF&G and NMFS would be forced to split the TACs between State and Federal waters and manage separately each portion of the TAC.

Classification

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as follows:

In the past two years, eight of the eleven scallop vessels active in Alaska have participated in the scallop fishery in Yakutat or Prince William Sound. This is a ''substantial number'' of small entities, as NMFS has interpreted this term to mean 20 percent of the total universe of small entities affected by the regulation. However the proposed action would not impose any compliance costs on small entities. Furthermore, the likely effects of the proposed action are positive and include: Safer fishing conditions for vessels and crews, and a consolidated fishing season that will reduce the overhead costs that are associated with conducting scallop fishing during two separate times of the year. Therefore, this action would not have a ''significant impact,'' as NMFS has interpreted that term to mean a reduction in annual gross revenues by more than 5 percent, an increase in total costs of production by more than 5 percent, or compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

This regulatory change was requested by industry to consolidate the scallop fishing seasons off Alaska and to improve safety in the fishery. While industry indicates that this regulatory change will improve safety, it will not have a significant economic impact on a substantial number of small entities because the scallop harvest quotas and other management measures for the fishery will remain unchanged. As a result, a regulatory flexibility analysis was not prepared. Copies of the EA/RIR are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 18, 1997.

David L. Evans,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq*., 773 *et seq*., and 3631 *et seq.*

2. Section 679.64 is revised to read as follows:

§ 679.64 Seasons.

(a) Fishing for scallops in the Federal waters off Alaska is authorized from 0001 hours, A.l.t., July 1, through 1200 hours, A.l.t., February 15 of the following year, subject to the other provisions of this part, except as provided in paragraphs (b) and (c) of this section.

(b) Fishing for scallops in the Federal waters of the Kamishak District of Scallop Registration Area H is authorized from 1200 hours, A.l.t., August 15 through 1200 hours, A.l.t., October 31, subject to the other provisions of this part.

(c) Fishing for scallops in the Federal waters of Registration Area A is authorized from 1200 hours A.l.t., January 10 through 1200 hours, A.l.t., June 30, subject to the other provisions of this part.

[FR Doc. 97–30803 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 226

Monday, November 24, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Commission on Small Farms; Meeting

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of meeting.

SUMMARY: The Secretary of Agriculture by Departmental Regulation No. 1043–43 dated July 9, 1997, established the National Commission on Small Farms (Commission) and further identified the Natural Resources Conservation Service to provide support to the Commission. The purpose of the Commission is to gather and analyze information regarding small farms and ranches and recommend to the Secretary of Agriculture a national policy and strategy to ensure their continued viability. The Commission's next meeting is December 10, 11, and 12, 1997.

PLACE, DATE AND TIME OF MEETING: On December 10, the Commission will meet at the Days Inn Crystal City Hotel, 2000 Jefferson Davis Highway, Arlington, Virginia from 7:00 p.m to 10:00 p.m. On December 11 and 12, the Commission will meet at the U.S. Department of Agriculture, Jamie L. Whitten Building, Room 107A, 1400 Independence Avenue S.W., Washington, D.C. On each day the Commission will meet from 8:00 a.m. to 5:00 p.m. to conduct Commission business. The purpose of the meeting is to finalize the Commission's findings and recommendations for consideration by the Secretary of Agriculture. The meeting is open to the public.

ADDRESSES: National Commission on Small Farms, USDA, PO Box 2890, Room 5237, South Building, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Jennifer Yezak Molen, Director, National Commission on Small Farms, at the address above or at (202) 690–0648 or (202) 690–0673. The fax number is (202) 720–0596.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to gather and evaluate background information, studies, and data pertinent to small farms and ranches, including limited-resource farmers. On the basis of the review, the Commission shall analyze all relevant issues and make findings, develop strategies, and make recommendations for consideration by the Secretary of Agriculture toward a national strategy on small farms. The national strategy shall include, but not be limited to: Changes in existing policies, programs, regulations, training, and program delivery and outreach systems; approaches that assist beginning farmers and involve the private sectors and government, including assurances that the needs of minorities, women, and persons with disabilities are addressed; areas where new partnerships and collaborations are needed; and other approaches that it would deem advisable or which the Secretary of Agriculture or the Chief of the Natural Resources Conservation Service may request the Commission to consider.

The Secretary of Agriculture has determined that the work of the Commission is in the public interest and within the duties and responsibilities of USDA. Establishment of the Commission also implements a recommendation of the USDA Civil Rights Action Report to appoint a diverse commission to develop a national policy on small farms. Individuals may submit written comments to the contact person listed above before or after the meeting.

Dated: November 19, 1997.

Pearlie S. Reed,

Acting Assistant Secretary for Administration.

[FR Doc. 97–30830 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee will meet on December 5, 1997 at the conference room in the Mendocino National Forest Supervisors Office, 825 N. Humboldt Avenue, Willows, California. The meeting will begin at 9:00 a.m. and adjourn at 3:30 p.m. Agenda items to be covered include: (1) Clear Creek Watershed Analysis Status, Community Proposal, and Grant Submittal; (2) Province Vegetation Mapping; (3) Effectiveness Monitoring Status; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Kathy Hammond, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1360.

Dated: November 17, 1997.

Kathy L. Hammond,

PAC Coordinator.

[FR Doc. 97–30764 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 13, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia (62 FR 6758). This review covers Heveafil Sdn. Bhd. (''Heveafil''), Rubberflex Sdn. Bhd. (''Rubberflex''), Filati Lastex Elastofibre (Malaysia) (''Filati''), Rubfil Sdn. Bhd. (''Rubfil'') and Rubber Thread International (Rubber Thread) (collectively ''respondents''), manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is October 1, 1993 through September 30, 1994. We gave interested parties an opportunity to comment on our preliminary results.

Petitioner and respondents submitted case briefs on March 10, 1997 and rebuttal briefs on March 17, 1997. No hearing was conducted in this review. Therefore, we have based our analysis on the comments received, and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or James Terpstra, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4740 or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. We are conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Background

On October 7, 1992, the Department published in the **Federal Register** (57 FR 46150) the antidumping duty order on extruded rubber thread from Malaysia. In October 1994, the petitioner, North American Rubber Thread, and the following respondents requested the Department to conduct an antidumping administrative review covering the period October 1, 1993 through September 30, 1994: Heveafil Sdn. Bhd. (''Heveafil''), Rubberflex Sdn. Bhd. (''Rubberflex''), Filati Lastex Elastofibre (Malaysia) (''Filati''), and Rubfil Sdn. Bhd (''Rubfil''). In addition, petitioner requested a review of Rubber Thread International (Rubber Thread). On November 14, 1994, we published a notice of initiation of an administrative review of this order for the period October 1, 1993, through September 30, 1994 (59 FR 56459). We conducted a verification of Rubberflex in Malaysia from September 23, 1996 until October 5, 1996, and of its U.S. affiliate in Hickory, North Carolina from October 16 to 18, 1996. Our preliminary results of review were published in the **Federal Register** on February 13, 1997 (62 FR 6758). Petitioner, Heveafil, Filati, Rubfil and Rubberflex filed case briefs on March 10, 1997 and rebuttal briefs on March 17, 1997. Rubber Thread reported that it made no shipments of the subject merchandise during the POR. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and U.S. Customs purposes. Our written description of the scope of this review is dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from North American Rubber Thread (petitioner), and Rubberflex, Rubfil, Heveafil and Filati (respondents).

Best Information Available (BIA) for Rubberflex

We found that responses provided by Rubberflex could not be verified within the meaning of section 776(b) of the Act. For a significant portion of the cost and expense items reviewed at verification, the information provided in the questionnaire responses was inaccurate or could not be verified. This includes, but is not limited to, information on indirect selling expenses, overhead, selling, general and administrative (SG&A) expenses, labor, materials, rebates, corporate structure, and the completeness of U.S. sales reporting. For numerous items, Rubberflex attempted to present revised information at verification. However, Rubberflex failed to disclose the numerous errors in its responses prior to, or at the start of, verification, as repeatedly requested by the Department. Rather, Rubberflex attempted to present its new information in a piecemeal manner, often late in the verification. This effectively precluded the Department from having adequate time to evaluate the scope and magnitude of the changes. Accordingly, we determined that Rubberflex failed to demonstrate the completeness and accuracy of its questionnaire responses at verification and thus failed verification.

As discussed in comments 1 through 27 below, we carefully reviewed Rubberflex's arguments in light of the February 14, 1997 verification report (verification report) and the supporting verification exhibits. This analysis reveals that Rubberflex's brief systematically mischaracterizes, and seeks to minimize the importance of, all of the myriad problems encountered at verification. As described below, and as in the preliminary results of review, we find that, pursuant to section 776(b) of the Act, the errors and problems found at verification render Rubberflex's questionnaire responses unusable for purposes of calculating a margin.

Section 776(b) of the Act requires the Department to use the best information available (BIA) if it is unable to verify the accuracy of the information submitted. In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information. *See* 19 CFR 353.37(b). Thus, the Department may determine the appropriate BIA on a case-by-case basis.

In cases where we have determined to use total BIA, we apply a two tier methodology of BIA depending on whether the companies attempted to or refused to cooperate in these reviews. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900 (February 28, 1995). When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's proceedings, we assign that company first-tier BIA, which is the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest calculated rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

When a company substantially cooperates with our requests for information including, in some cases, verification, but failed to provide complete or accurate information, we assign that company second-tier BIA, which is the higher of: (1) The highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest

calculated rate for any firm in this review for the class or kind of merchandise from the same country of origin. *See Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993).

We applied second-tier BIA to Rubberflex. While Rubberflex cooperated throughout the administrative review by submitting questionnaire responses and submitting to verification, we found that responses provided by Rubberflex could not be verified. Accordingly, we resorted to BIA pursuant to section 776(b) of the Act. The deficiencies are outlined in detail in the preliminary results of review and in the public version of the memorandum on Rubberflex's Failed Verification from Holly Kuga to Jeffrey P. Bialos, dated December 12, 1996.

In this case, the BIA rate is the highest calculated rate for any firm in this review for the class or kind of merchandise from the same country of origin. Thus, as a result of our review, we determined the dumping margin for Rubberflex to be 29.83 percent.

Comments Concerning Rubberflex

Rubberflex argues that the Department was not justified in disregarding its responses and assigning a total BIA rate in the preliminary results. Rubberflex contends that the Department verified Rubberflex's questionnaire responses, and that, at most, the Department should use partial BIA for certain aspects of its dumping calculations. Rubberflex made numerous detailed arguments refuting and rebutting the Department's preliminary results, verification report, and verification failure memo. We have addressed these to the greatest extent practicable in this notice. However, many of the comments are extremely detailed and many can only be completely addressed by reference to proprietary data. Accordingly, we addressed each comment in complete detail in a proprietary analysis memorandum to the file dated November 12, 1997.

Comment 1: Reconciliation of Sales, Profit and Expenses. Rubberflex maintains that it provided the Department with a reconciliation of its calendar year 1993 and 1994 trial balances to the appropriate audited, consolidated financial statements at verification. Rubberflex states that, contrary to the verification report, total sales, profit, financing expenses, and indirect selling expenses were reconciled to the audited financial statements.

DOC Position: We agree that Rubberflex was able to reconcile the total value of the expenses reported on the trial balance to its audited financial statements for the above-mentioned figures. We disagree that this had any bearing on the verification of the amounts reported in the questionnaire response. This reconciliation was not what was requested of the company at verification. Rubberflex voluntarily provided the reconciliation of sales, cost and profit from the trial balance to the audited financial statement in response to the Department's request that it demonstrate that the indirect selling expenses figures provided in the revised response provided at verification tied to the audited financial statements. Rubberflex did not demonstrate that the figures reported in its revised response for indirect selling expenses and G&A tied to its audited financial statements.

Comment 2: Reconciliation of Rubberflex's Affiliates' Financial Statements. Rubberflex disputes the Department's determination that its home market indirect selling expenses did not reconcile to its current financial statement due to the fact that indirect selling expenses incurred in Rubberflex's U.K. and German branch offices (expenses which account for differences between the home market indirect selling expenses and the financial statement) could not be verified. Rubberflex contends that during verification it demonstrated how total sales, expenses, and profits of the U.K. and German branches accounted for differences between consolidation totals and totals for Rubberflex in Malaysia. Further, Rubberflex claims that it should not be held accountable for providing original copies of the auditors' consolidation worksheets in the short time permitted at verification. Rubberflex also contends that it stressed during verification that information involving its U.K. and German branches could only be accurately verified on site in those particular countries.

DOC Position: We disagree. It is one of the primary requirements of verification that a company is required to tie the information in its questionnaire response to its audited consolidated financial statements. Rubberflex failed to do so at verification. Rubberflex is essentially arguing that we should accept their attempt, but ultimate failure. We disagree. Given the circumstances of this review, where Rubberflex provided numerous, inadequately explained or documented revisions to its questionnaire response, Rubberflex's failure in this regard undermines the entire verification.

Comment 3: Italian Sales List. Rubberflex states that the Department verified that all Italian sales were reported. Moreover, Rubberflex contends that the Department noted no discrepancies when Rubberflex tied Italian sales to its 1993/94 audited financial statements and other ledger balance accounts. Rubberflex claims that the sales prices and quantity for all third-country sales reviewed by the Department tied to source documents presented by Rubberflex, except for one minor discrepancy in the quantity reported in the sales list.

DOC Position: The Department did not note any discrepancies in its verification report with respect to the volume and value of sales to Italy. However, we did not verify the price of Italian back-to-back sales or inventory sales, since the proof of payment information is kept in Italy.

Comment 4: Foreign Inland Freight, and Brokerage and Handling. Rubberflex contends that these expenses were reported on a transaction-specific basis, and charged on a flat-rate based on the size of the container or the bill of lading. Although Rubberflex was unable to present original invoices for these expenses, or proof of payment on two preselected sales, Rubberflex contends that it was able to demonstrate that the flat fee allocated according to the actual quantity shipped tied to amounts reported in its response.

DOC Position: We agree that Rubberflex was unable to present original invoices for these expenses, or proof of payment on two preselected sales. In addition, our December 12, 1996 memorandum *Rubberflex Sdn. Bhd.: Reasons for a determination of failed verification for the 1993–1994 and 1994–1995 reviews of extruded rubber thread from Malaysia (A–557–805)* (December 12, 1996 memorandum) states that, Rubberflex was missing a number of freight invoices and/or the batch statements tying the invoices to the financial statements, and as a result, [we] could not document freight expenses from the factory to the port. Therefore, we disagree that Rubberflex was able to demonstrate that the flat fee allocated according to the actual quantity shipped tied to amounts reported in its response.

Comment 5: Ocean Freight. Rubberflex claims that the Department verified ocean freight on sales to Italy on a transaction-specific basis, and found no discrepancies in the information presented with respect to pre-selected sales.

DOC Position: We agree with Rubberflex's characterization of the verification of ocean freight.

Comment 6: Credit Expenses in the Home Market. Rubberflex states that its original response contained the

information needed to calculate credit expenses for third-country sales and that this response was neither revised nor found to contain any significant errors during verification.

DOC Position: Our verification report notes that Rubberflex reported the appropriate expenses for its net interest expense in the cost response, but omitted certain expenses related to export credit refinancing (EAR) expenses from its calculation of the interest rate used in home market sales. Therefore, we disagree with Rubberflex's contention that credit expenses for third-country sales were verified as reported.

Comment 7: Packing Expenses Incurred in the Home Market. Rubberflex claims that at the beginning of verification, it disclosed to the Department that it had erroneously allocated the cost of all factory workers' benefits in the category of fixed overhead costs, rather than allocating that cost among direct labor costs, fixed overhead costs, and packing labor costs. Rubberflex stated that a corrected worksheet reflecting this reallocation was submitted to the Department at the beginning of the cost verification, and subsequently verified. Rubberflex contends that a comparison of the original to the corrected worksheets reveals only minor changes in the calculation of packing labor costs. Further, Rubberflex also contends that it submitted an additional worksheet which proved that the reallocation did not affect the total cost of production (COP) or constructed value (CV).

DOC Position: We agree with Rubberflex that we found only minor discrepancies in Rubberflex's calculation of packing material and labor expenses. However, we disagree that Rubberflex presented any documentation at the beginning of verification to demonstrate what changes it made to the classification of labor expenses in its sales and cost response. Rubberflex did make a general oral statement that it had reallocated some labor costs across packing, indirect overhead and factory labor, but it did not spell out those changes. The Department then directly and repeatedly requested Rubberflex to provide this information in writing, which it said it would do. However, Rubberflex failed to report any of its changed allocations until each subject arose in the course of the verification.

Comment 8: Indirect Selling Expenses Incurred in the Home Market. Rubberflex states that the worksheets provided in its questionnaire response regarding home market indirect selling expenses and general and administrative expenses (G&A) were based on its auditor's presentation of G&A expenses, which in turn were based on Rubberflex's trial balance and general ledger. Rubberflex contends that the titles of the concepts listed in the auditor's presentation did not always relate directly to the titles of the accounts used by Rubberflex in the ordinary course of business because the auditor collapsed several accounts into a single concept. Rubberflex further contends that while preparing for verification, it discovered that the worksheets in its response required two corrections. However, Rubberflex maintains that: (1) It disclosed these changes on the first day of verification, (2) the Department reviewed these revisions, and (3) these revisions were tied to the financial statements.

DOC Position: As we explained in the Best Information Available for Rubberflex section of this notice and the Department's position to Comments 1 and 2, Rubberflex failed to demonstrate that it reported all of the appropriate indirect selling expenses and G&A expenses to the Department, despite three separate submissions, and that it failed to tie the reported expenses to its audited financial statements. It failed to provide a worksheet, or any other type of document, reconciling the titles and concepts used in its trial balance to those on the audited financial statements. (*See* page 2 of the Department's December 12, 1996 memorandum concerning the verification failure for Rubberflex.) Therefore, Rubberflex failed to demonstrate that it included all appropriate indirect selling expenses and G&A expenses in its revised exhibit, and that those expenses tied to the total amount of expenses recorded for Rubberflex Malaysia on Rubberflex's financial statements.

Comment 9: U.S. Sales Listing. Rubberflex contends that it demonstrated at the verification in Malaysia that (1) all purchase price (PP) sales entered into the United States during the review period were reported; (2) it accurately reported the date of sale for PP sales as the Malaysian bill of lading date; and (3) it accurately reported foreign inland freight, packing, indirect selling expenses, brokerage and handling, international freight and marine insurance pertaining to U.S. sales that were incurred in Malaysia.

DOC Position: We disagree with Rubberflex's characterization of the verification of the U.S. sales. Our review of Rubberflex's U.S. sales reporting during the U.S. portion of the verification revealed a great deal of confusion concerning the date of sale and the accuracy of the computer sales listing. Rubberflex was unable to demonstrate that the price, quantity and date of sale were accurately reported on the computer sales listing. At verification in Malaysia, and in the questionnaire response, the date of sale for all PP sales was identified as the Malaysian bill of lading date. However, in the United States, company officials stated that for certain consignment sales, which were made prior to importation, Rubberflex used the date on which the rubber thread is withdrawn from Rubberflex's customer's inventory as the date of sale. Thus, the questionnaire response, and the Malaysian verification findings, were contradicted. Moreover, because Rubberflex failed to indicate on its computer tape which sales were consignment sales, it was not possible to know what date of sale was operative for any of the sales listed on the computer tape.

With respect to the accuracy of the other expenses: (1) The problems with foreign inland freight and indirect selling expenses are discussed elsewhere, and (2) we found only minor discrepancies with ocean freight, marine insurance or brokerage and handling.

Comment 10: The Total Volume and Value of PP and Exporter's Sales Price (ESP) Sales. Rubberflex argues that the Department was able to reconcile the quantity and value of Rubberflex's sales to the response after certain adjustments were made at the U.S. verification. Rubberflex contends that, at the U.S. verification, Rubberflex provided worksheets that traced the reported quantities and values of the U.S. sales to Rubberflex's audited financial statements.

DOC Position: We disagree. The verification report establishes that Rubberflex was never able to conclusively demonstrate that its U.S. sales were correctly reported. Rubberflex was not able to demonstrate the validity of the information provided on the computer tapes by the end of the verification.

As Rubberflex explains in its case brief, it presented a reconciliation of the volume and value of sales from its financial statements to the response. We found a number of clerical errors and omissions, such as credit memos that were initially omitted from the reconciliation exercise because they were omitted from the response. We found that: (1) Certain sales were reported in two review periods; (2) others were misclassified between PP and ESP sales; (3) the date of sale for certain PP sales was misreported; and (4) Rubberflex could not reconcile its

credit memos to the specific line items on the computer tape. Given that we found errors in almost every phase of the numerous attempted reconciliations of U.S. sales, it is not accurate to claim, as does Rubberflex, that the quantity of U.S. sales was in any way reconciled completely. Consequently, we found that these errors and omissions undermined the integrity of the response and made the computer tape unusable for the purpose of calculating a margin.

Comment 11: Date of Sale Methodology for U.S. Sales. Rubberflex notes that the Department's December 12, 1996 memorandum stated that Rubberflex failed to use the appropriate date of sale methodology for purchase price sales in the 1993–1994 review. Rubberflex contends that the terms of sale sometimes changed between purchase order and the bill of lading date; thus the essential terms were not set on the purchase order date. It notes that the reporting methodology for this review is consistent with the methodology used in both the original investigation and the prior reviews. Rubberflex contends that the verifiers confirmed that no entries had been improperly omitted in the beginning of the 1993–1994 period of review.

DOC Position: We disagree that Rubberflex reported all of its sales to the United States that were required by the questionnaire. Page 33 of our questionnaire asked Rubberflex to report all purchase price sales that caused the entry of the subject merchandise during the period of review, regardless of whether the sale date occurred during the period of review, or prior to the period of review. Rubberflex claimed at verification both in Malaysia and in the United States that the terms of the sale, that is, the price and quantity of the sale, were fixed on the purchase order date, and that the purchase order was required either to initiate production or shipment. The verification points to few, if any, changes in the terms of the sale after the purchase order date. Therefore, by using the Malaysian bill of lading date as date of sale for PP sales, and by reporting only those sales that were shipped from Malaysia during the period of review, rather than all purchase price sales that caused the entry of the subject merchandise during the review period, (which it had the ability to report) Rubberflex failed to report all the sales required by the Department's questionnaire. In addition, at verification, Rubberflex claimed that all consignment sales that entered the U.S. during the review period, but were withdrawn from Rubberflex's customer's inventory after the review period, should have been reported during the subsequent (1994–1995) review period using the U.S. invoice date as the date of sale. This date of sale methodology does not agree either with what was reported in the response, or what was requested in the Department's questionnaire.

Comment 12: Review Classification According to Date of Entry. Rubberflex states that its inadvertent error of classifying 37 sales under two different review periods can be easily rectified, and should not form the basis for the assignment of total BIA. Rubberflex disputes the Department's contention that Rubberflex was not able to state with any clarity for which review the 37 sales should have been reported. Rubberflex claims that the Department verified the entry dates for the sales in question and noted no discrepancies. Therefore, Rubberflex requests that the Department revisit this issue and reclassify those 37 sales into the appropriate review period according to date of entry.

DOC Position: At verification, Rubberflex was unable to appropriately classify all of its sales to the United States with regard to review period and type of sale (PP or ESP). We asked Rubberflex to properly classify 37 of the approximately 125 PP sales that we found reported in both reviews. Rubberflex claimed that all consignment sales should be classified in the 1994–1995 review. However, this classification did not coincide with the narrative of its response which indicated that it used the Malaysian bill of lading date as the date of sale. Some of these consignment sales had U.S. entry dates which occurred during the 1993–1994 review period. Therefore, since the U.S. entry date always follows the bill of lading date in Malaysia (since the ship arrives in the U.S. after it leaves Malaysia), these sales could not properly be classified in the 1994–1995 review. When the Department tried to examine the rest of the computer sales listing for the treatment of the date of sale in consignment sales, it found that Rubberflex did not indicate which sales were consignment sales on the computer sales listing submitted to the Department. Consequently, the Department cannot determine whether the rest of the sales reported on the computer tape were appropriately classified with respect to review period, and therefore, we have no basis by which to accurately reclassify these 37 sales or to verify the accuracy of respondent's classification of the remaining U.S. sales as reported by respondent.

We note again that it is Rubberflex's responsibility, not the Department's, to prepare the questionnaire response. The errors we found at verification in the preparation of Rubberflex's U.S. sales data were so wide-spread and pervasive that the Department could not ensure that any of the reported information was correct unless we were to undertake the task of reconstructing the questionnaire response ourselves.

Comment 13: ESP and PP Sales. Rubberflex disputes the Department's determination that it misreported or duplicated the reporting of certain sales (*i.e.,* certain sales classified as both ESP and PP). Rubberflex explains that it clarified during verification the reason why certain invoices were referenced under different review periods and classified under different U.S. databases. As an example, Rubberflex states that sales must be reported under various U.S. classifications because certain consignment sales and sales made out of inventory normally result in a number of invoices issued by the U.S. affiliate, whereas the container corresponding to those sales is recorded in Rubberflex's books as a single invoice. Moreover, Rubberflex claims that during verification, the Department examined a few invoices having similar circumstances and indicated its satisfaction with Rubberflex's explanations, and did not request to view additional invoices. Rubberflex contends that it properly reported all U.S. sales.

Petitioner contends that Rubberflex confused the standard for when sales are PP versus ESP. If a subsidiary is fully responsible for setting the terms of the sale (as Rubberflex's U.S. subsidiary is for all U.S. sales), that alone makes the sales ESP sales according to *Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9171, 9171–72 (February 28, 1997)(Comments 14 and 16).

DOC Position: We disagree with Rubberflex. Pages 27 and 28 of the verification report note that company officials were confused about the classification of Rubberflex's U.S. sales with respect to ESP and PP and with respect to review period. At the conclusion of the verification, company officials were still unable to determine which sales should or should not be reported, or whether they were PP or ESP sales.

Comment 14: Credit Memos in the U.S. Market. Rubberflex contends that the Department overstates the impact of the omitted credit memos during the POR. Rubberflex claims that its U.S. affiliate identified the omitted credit

memos, most of which had no effect on unit price, and thus no effect on dumping margins of any U.S. sales. Rubberflex disputes the Department's determination that the omitted credit memos made it impossible to tie the U.S. sales listing to the U.S. affiliate's financial statements.

DOC Position: We disagree. Rubberflex reported the U.S. price and quantity net of credit notes, despite instructions in the questionnaire to record price and quantity adjustments separately. Therefore, it is not possible to determine which sales have price and quantity adjustments attributed to them by examining the computer tape.

At verification, Rubberflex was unable to reconcile the credit memos to the computer sales listing. First, Rubberflex failed to have its reconciliation (via the mechanism of credit memos) of the PP sales value from the financial statements to the response prepared at the beginning of the verification. Second, Rubberflex initially failed to report all of its credit memos with respect to ESP sales on the reconciliation from the financial statements to the computer sales listing. Further examination revealed that Rubberflex had also failed to revise the computer sales listing to account for these missing credit memos. Finally, Rubberflex company officials in the United States stated that they did not know how to tie the credit memos listed in the verification exhibit 52 to the questionnaire response since Rubberflex company officials in Malaysia prepared that portion of the response.

Comment 15: U.S. Inland Freight. Rubberflex claims that it tied its U.S. average freight expense to its financial statements for a sample month, except for a small amount due to accruals.

DOC Position: We agree with Rubberflex's characterization of the U.S. inland freight verification.

Comment 16: Inventory Carrying Costs. Rubberflex contends that it established the accuracy of all of the figures used to calculate inventory carrying costs in the United States: the cost of goods sold in the U.S. and time on the water.

DOC Position: We were unable to examine Rubberflex's inventory turnover rates and U.S. interest rates during verification and, therefore, disagree with Rubberflex's contention that we established the accuracy of all the figures necessary to calculate inventory carrying costs in the United States. We agree that we found no discrepancies in the verification of the cost of goods sold in the United States and time on the water, which are the two other figures required to verify the inventory carrying costs.

Comment 17: Corrected Worksheets Should Be Part Of The Record. Rubberflex contends that given the time constraints, it was unable to present corrected worksheets on the first day of verification, and therefore, those worksheets, which Rubberflex contends were subsequently submitted and verified, should not be disregarded. Rubberflex disputes the Department's finding that it had no worksheets to demonstrate how the original responses were prepared or why they were changed or what the relationship was between the original and revised submissions. Rubberflex contends that corrected worksheets were submitted during verification, are referred to in the Department's verification report and are found in the verification exhibits. Rubberflex states that a side-by-side comparison of the original to the revised worksheets clearly reveals the relationship between the documents.

Rubberflex also contends that on the first day of verification, it suggested to the Department that any corrected worksheets be included as part of the verification exhibits normally submitted after verification and that the Department did not object to its proposal. Rubberflex also states that it repeatedly requested to submit revised computer tapes to reflect corrections it claims to have presented during the beginning of verification. However, Rubberflex claims that the Department never responded to its request.

Petitioner emphasized that Rubberflex did not submit to the Department a listing of reporting errors at the commencement of verification, nor was petitioner served such a list, as required by the Department's regulations. Petitioner contends that Rubberflex's claim that the Department was advised at the commencement of verification of certain errors in its submissions should be of no consequence.

DOC Position: As stated in our preliminary results, we found that the responses provided by Rubberflex could not be verified. The inaccuracies which render the response unusable for purposes of margin calculations include the fact that Rubberflex attempted to provide revised questionnaire responses at verification for home market indirect selling expenses, direct labor and packing labor expense, variable overhead, financing expenses and the cost of goods sold; for these same expenses Rubberflex could not demonstrate how the original response was supported by documentation, nor could it document the difference between the original and revised submission for these items.

Rubberflex failed to provide written disclosure of changes made to its questionnaire response on the first day of verification, although it was asked to do so. Rather, it provided verification exhibits which constitute revised questionnaire responses throughout the course of the verification. Rubberflex also failed to explain and/or quantify the effects of these revisions, rendering the Department unable to assess the significance or impact of these changes. As we stated in *Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 969, 970 (January 7, 1997), the Department can accept new information at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.

Rubberflex states in its brief that it submitted such revisions at the beginning of the verification. This is directly contradicted by the facts on the record. There were 38 verification exhibits covering the verification in Malaysia. The document concerning packing costs is exhibit number 18, that regarding direct labor is exhibit number 22 and that regarding fixed overhead is exhibit number 33. As such, the record clearly demonstrates that the information was provided piecemeal, and late in the verification exercise.

We also disagree with Rubberflex's contention that the Department engaged in any discussion during verification concerning a suggestion that Rubberflex file any corrected worksheets with the exhibits normally filed after verification. We further disagree that Rubberflex engaged in any discussion concerning the provision of a revised computer tape. Moreover, given the pervasive errors and changes made to the questionnaire response and the difficulties verifying those changes, the Department has no reason to believe that a new computer tape, submitted after verification, would accurately represent the changes to the response that were presented during the verification. Under the circumstances of this case, the Department would undermine its purpose in verifying the questionnaire response by accepting such new information after verification.

Comment 18: Corporate Structure. Rubberflex disputes the Department's finding that Rubberflex failed to identify the owners of its company and the existence of an affiliated European

company. Rubberflex claims that it demonstrated the identity of its parent company through its annual return to the Government of Malaysia, which reports information regarding its shareholders and directors. Further, Rubberflex contends that it tied the shareholdings from the annual return to a corporate structure worksheet provided in its response.

In addition, regarding any European affiliates, Rubberflex contends that it could not provide documentation regarding the sale of these companies, which it explained to the Department at verification. Rubberflex further states that, regardless, the sale of affiliated European resellers have no relevance to Rubberflex's sales verification in the home and U.S. markets.

DOC Position: We disagree with Rubberflex that corporate structure was adequately verified. Rubberflex provided new information at verification by introducing the existence of a previously unreported corporate owner. We asked Rubberflex to provide information regarding whether this company had any affiliation with Rubberflex's customers or suppliers. However, Rubberflex declined to produce such information. Rubberflex merely stated, as it does in its case briefs, that the affiliated European resellers have no relevance to Rubberflex's sales in the home market and the United States. Consequently, the Department was unable to satisfy itself regarding whether any related-party sales, loans, equipment purchases or raw material purchases occurred during the POR. As the U.S. Court of International Trade stated in *Krupp Stahl A.G.* v. *United States*, 17 CIT 450; 822 F. Supp. 789, 792 (1993), it is inappropriate for respondents to limit or control which information they present to the Department in a way that impedes the Department's ability to confirm the accuracy of the questionnaire response or forces the Department to use information most beneficial to them.

Comment 19: Direct Material Costs. Rubberflex claims that the Department verified the direct material costs used in its COP and CV submissions. Rubberflex contends that the Department examined the following steps Rubberflex used to calculate the direct material costs: (1) The compound recipes of direct materials latex and chemicals used as the basis for determining product-specific cost of productions for all types of rubber thread; (2) the budgeted costs used to derive the standard per-unit costs; (3) the actual cost of materials used; and (4) the variance between standard and actual material costs. Rubberflex argues that the Department verified the steps by examining batch records (computer listings which aggregate a number of invoices that appear as a single line item in the general ledger), testing inventory formulas, and determining that Rubberflex accurately captured and reflected all direct material costs incurred during the review period.

Rubberflex notes that the Department questioned the budgeted costs because they were derived in 1991 and differed from the weighted-average costs of materials in inventory. Rubberflex stated that these budgeted costs had not been revised since 1991 because they were still a reasonable estimation of the costs of the various materials used to produce rubber thread and none of the costs had changed significantly. Rubberflex argues that the budgeted costs are a reasonably accurate tool for predicting costs over time.

DOC Position: We disagree with Rubberflex that per-unit direct materials cost was verified. We did verify the total material cost during the POR as well as the actual quantity of materials used. However, neither of these figures alone is sufficient to calculate the per-unit cost reported in the questionnaire response. Rubberflex reported its per-unit material cost by multiplying actual material used per product by standard material prices to arrive at a standard cost. To calculate a variance, Rubberflex calculated the total material cost at standard; it then made a factory-wide adjustment for the difference between total actual material cost and the total material cost at standard. This methodology is not, in itself, a problem.

There are two problems which arise from Rubberflex's use of the 1991 standard prices. The first is that Rubberflex was unable to substantiate how those prices were calculated in 1991 and what those figures represent. Therefore, it is not possible to evaluate the accuracy of the per-unit cost calculations. Rubberflex made no attempt to demonstrate that these prices were reasonable, or that the use of 1991 prices to calculate costs for 1995 products was non-distortive.

The second problem is that the actual material prices paid by Rubberflex during the POR have changed relative to the 1991 standard prices that were used as the basis for the company's standard costs and variance allocation. As the verification report on page 17 states, we compared the 1991 standard prices with the actual POR prices and found that the prices of individual materials increased or decreased at different rates. In several instances the changes were substantial. Because each product uses a different mix of materials, the cost of producing each different product would change relative to the cost of other products produced in the factory. Thus, by neglecting to update its standard material prices to reflect changes in the actual cost of materials, Rubberflex failed to accurately capture the per-unit materials cost for the subject merchandise, both in terms of its standard cost and for its variance allocation.

Comment 20: Direct Labor Costs. Rubberflex contends that the Department verified its labor costs in full. Rubberflex argues that it used the following steps to calculate the direct labor costs reported in its COP/CV submissions: (1) Calculate actual direct labor cost per minute of production by dividing total direct labor costs during the review period by the total production time during the review period; (2) allocate the cost per minute to specific products based on the standard number of minutes required to produce particular types of rubber thread; and (3) adjust the product-specific costs calculated using the standard yield for the variance between actual and predicted factory operation.

Rubberflex notes that at the beginning of verification, it disclosed certain minor revisions, and provided a corrected worksheet, to the Department. Rubberflex claims that a side-by-side comparison of the original and corrected worksheets reveals only minor corrections. In order to verify the corrected worksheet, Rubberflex states that it traced all of the reported expenses to its trial balance, and traced from the trial balance to the general ledger and relevant source documentation.

DOC Position: We agree that Rubberflex followed the method it outlined to determine direct labor expenses. However, we disagree with Rubberflex's characterization that these expenses were fully verified. *See DOC Position* to comment 17. Rubberflex failed to clearly demonstrate the impact of these changes on the calculations in the questionnaire response. For example, Rubberflex contends that the revised data reflected merely a reclassification of certain labor costs. Despite the fact that much of Rubberflex's explanation is *post hoc*, their own exhibits belie their assertions. An examination of the exhibits placed side-by-side in exhibit 3 of Rubberflex's brief reveals numerous and significant differences in the exhibits, differences that Rubberflex failed to account for.

A second problem arose during the verification of labor expenses. As we explain on page 15 of our verification report, Rubberflex failed to provide

supporting documentation for managerial labor expenses, despite the Department's request, thus placing control * * * in the hands of uncooperative respondents who could force Commerce to use possibly unrepresentative information most beneficial to them. *Krupp Stahl,* 822 F. Supp. at 792.

Comment 21: Variable Overhead Costs. Rubberflex contends that at the beginning of verification, it disclosed to the Department two minor errors concerning its variable overhead costs: (1) Rubberflex reported the salary of the factory supervisor and manager as variable overhead costs, rather than fixed overhead costs; and (2) certain components of variable overhead needed to be corrected to reflect year-end adjustments. Rubberflex stated that a corrected worksheet reflecting this reallocation was submitted to the Department during the cost verification. Rubberflex claims that a side-by-side comparison of the original and corrected worksheets reveals only minor changes. Rubberflex states that the costs were verified by the Department and that final expense figures used were appropriately recorded in monthly accounts, according to the Department's verification report. In addition, Rubberflex states that these minor changes were necessitated by adjustments made by the auditors after performing a physical inventory of materials.

DOC Position: We disagree. *See DOC Position* to Comment 17.

Comment 22: Fixed Overhead Costs. Rubberflex contends that at the beginning of verification, it disclosed to the Department several minor errors concerning its fixed overhead costs: (1) Rubberflex reported the salary of the factory supervisor and manager as variable overhead costs, rather than fixed overhead costs; (2) the cost of all benefits for workers in the factory was included in fixed overhead cost, rather than being allocated among direct labor costs, fixed overhead costs, and packing labor costs; and (3) Rubberflex's auditor made a provision for writing-off finished goods inventory, which did not exist at the time of the original questionnaire response. Rubberflex stated that it provided a corrected worksheet reflecting this reallocation during the cost verification. Rubberflex contends that the magnitude of any corrections made with regard to the original worksheet were minor. Rubberflex contends that the Department verified the corrected worksheet by tracing expense amounts to source documents, the trial balance and the general ledger.

DOC Position: We disagree. *See DOC Position* to Comment 17.

Comment 23: Depreciation. Rubberflex claims that the Department verified the reported depreciation figures by tracing the figures to the trial balance, general ledger, asset schedules, and selected purchase invoices for assets. Rubberflex disputes the Department's finding in the verification report that it could not rely on the accuracy of reported depreciation expense due to the fact that the original cost basis for certain assets acquired prior to 1990 could not be traced to the appropriate asset schedule in the year of purchase. Rubberflex justifies its inability to produce original cost basis information on certain assets by claiming that: (1) It is unreasonable for accounting or tax purposes to maintain accounting documents for more than five years, particularly where Malaysian tax authorities do not require the retention of these documents for that period of time; (2) Rubberflex was not notified that such documents may be needed for verification purposes; and (3) the Department traced the annual depreciation for assets purchased before 1990 to trial balances and asset schedules for fiscal years 1993, 1994, and 1995, and could plainly see that the assets were being depreciated in a systematic manner, which was reviewed and approved by its auditors. Therefore, Rubberflex claims that its inability to provide original asset schedules for years prior to 1990 does not provide grounds for the Department to question the accuracy of the reported costs.

DOC Position: We disagree with Rubberflex that its inability to provide original asset ledgers for certain items requested is not a verification problem. The verification report specifies that we became aware that Rubberflex purchased certain major pieces of capital equipment from an affiliated party. Examples of these purchases are recorded on verification exhibit 36. Pages 18 and 19 of the verification report note that we attempted to determine whether the transfer price of such equipment, and the associated depreciation expenses, represented arm's-length transactions. Rubberflex failed to provide information responsive to our request. Thus, we were unable to satisfy ourselves in this regard.

We agree that Rubberflex reported the depreciation expenses on its books and records, which were audited and in accordance with Malaysian GAAP. Normally we use the costs and expenses recorded on the company's books and records, provided that we are satisfied that such costs are non-distortive. In this case, we had reason to question whether the depreciation expenses recorded on Rubberflex's books where under-or overstated (*i.e.* distortive) by reason of an affiliated party transaction.

Finally, it is reasonable to request Rubberflex to document the figures that it used to record its depreciation expense on its books and records. Rubberflex depreciates certain machines and buildings for more than 5 years and reflects those figures on its books and records. It is standard verification practice to ask companies to demonstrate the figures, and to keep documentation supporting information submitted in an antidumping proceeding, for the purpose of verification. The U.S. Court of International Trade held in *Krupp Stahl,* 822 F. Supp. at 792, that, despite the fact that the German authorities did not require the company to maintain business records for more than five years, it did not absolve a respondent in an antidumping proceeding of the responsibility of providing source documents to support its questionnaire response.

Comment 24: General and Administrative (G&A) Expenses. Rubberflex states that at the beginning of verification, it submitted a revised worksheet which properly captured certain G&A expenses. Some of these expenses were misclassified as G&A expenses in the original questionnaire response and, therefore, were not properly included in the worksheet for indirect selling expenses. Rubberflex further explains that it provided worksheets and source documentation which substantiated its allocation methodology with regard to indirect selling expenses and G&A expenses. Rubberflex contends that the Department traced the amounts shown in the revised worksheet to relevant trial balances, source documentation, and the general ledger.

DOC Position: We disagree. *See DOC Position* to Comment 17. The G&A expenses in the original questionnaire response were presented in a different format from the G&A expenses in the revisions presented at verification, so direct comparisons are not possible. Rubberflex never presented a systematic explanation of how individual elements of G&A were affected by the revisions, nor how or why the totals changed. Rather, as with variable overhead, the Department was left with insufficient time and information to evaluate the magnitude of the change. Again, this was a situation where a company's failure to reconcile its submitted costs to its normal books and records prevents us from quantifying the magnitude of the distortions which exist in its

submitted data. *Certain Cut-to-Length Carbon Steel Plate From Sweden: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 51898, 51899 (October 4, 1996) (the Department's position adopted in the final results of review, 62 FR 18396 (April 15, 1997)).

Finally, contrary to Rubberflex's assertion, it was unable to tie the specific line items from its revised worksheets to the audited financial statements. The fact that total profit, sales, and cost of goods sold (COGS) figures were traced is irrelevant. It is precisely the items which could not be traced—the components of G&A—which were under evaluation at verification.

Comment 25: Financing Expense. Rubberflex states that while preparing for verification it discovered slight errors related to the amounts reported for bank charges and interest on bills refinanced. Rubberflex further states that these corrections were presented to the Department at verification and that it demonstrated the accuracy of the revised worksheet by tying the total financing expenses and interest received to the total expenses stated in the trial balance for financing expenses and interest received, respectively.

DOC Position: We disagree. *See DOC Position* to Comment 17 and pages 20 and 21 of the verification report.

Comment 26: Conduct of the review. Rubberflex contends that it fully cooperated under difficult circumstances during this proceeding and that the Department must bear a significant portion of the responsibility for any problems that arose at verification. In addition to the short preparation time given to Rubberflex prior to the verification, Rubberflex enumerates a list of Departmental procedural errors, which Rubberflex contends unfairly prejudiced its interests and resulted in the use of BIA in the preliminary results. According to Rubberflex, these procedural errors were due to the Department's untimely handling of the case. Rubberflex stated that it did the best it could under these circumstances to cooperate fully and that it submitted its responses and verification exhibits in a timely manner, and prepared for the verification to the extent possible given the time available.

DOC Position: We agree with Rubberflex that there was a great deal of case activity within a relatively short period in 1996. However, we disagree that we unfairly prejudiced Rubberflex by our conduct of the case. The supplemental questionnaires for this and the 1994–1995 review were relatively short and not overly demanding and Rubberflex was given adequate time to respond. The record reflects that Rubberflex was given several extensions of time to submit its data; in fact, Rubberflex was granted every extension request it made. Finally, Rubberflex was given sufficient notice of the timing of verification, and the Department followed the same standard procedures, and issued a standard verification outline which was substantially similar for the verification of information in both the 1993–1994 and 1994–1995 reviews. These procedures were similar to those followed in the original investigation, when Rubberflex underwent verification. Thus, there is little evidence that the Department's conduct of the case placed an unreasonable burden on Rubberflex. Rather, in this case, as in virtually every case the Department conducts, the burden on respondents is to provide accurate and timely data which can be verified. To the greatest extent possible, the Department strives to be flexible with deadlines for respondents; ultimately, however, it is respondents' responsibility to meet this burden. Nevertheless, we took into account Rubberflex's level of cooperation in this case in our selection of the appropriate BIA rate for Rubberflex's antidumping margin. (*See Best Information Available for Rubberflex* section above.)

Comment 27: Partial BIA. Because of the arguments presented, Rubberflex claims that the application of a total BIA is not warranted. Rubberflex contends that during verification, it tied all information submitted in its original response to its trial balance, and ultimately, to its audited financial statements. Further, Rubberflex emphasizes that because the Department verified virtually all of the submitted sales and cost data, the fact that a few minor errors were disclosed at the commencement of verification should not provide the legal basis for the Department to disregard its entire response and resort to BIA. Rubberflex cites to prior Departmental determinations in which the Department states that it will resort to BIA only for those specific items of the response that it was not able to verify. *See Notice of Preliminary Results of Antidumping Duty Review; Roller Chain, Other Than Bicycle, From Japan,* 61 FR 28171, (June 4, 1996); *Final Results of Antidumping Duty Review and Revocation in Part of Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China,* 62 FR 6189, (February 11, 1997). Rubberflex concedes that it did not submit an error-free response. However, Rubberflex states that minor errors and corrections were presented to the Department during verification. Rubberflex argues that the fact that some corrections were not presented on the first day of verification does not provide the Department reasonable grounds for disregarding them because Rubberflex was provided only two days for verification preparation. Therefore, in light of the above-mentioned circumstances, Rubberflex's cooperation in this review, and Rubberflex's claims that the Department was able to verify its responses, Rubberflex argues that the Department does not have legal grounds to use total BIA.

Petitioner contends that because the Department determined during verification that Rubberflex's questionnaire responses were wholly deficient and unverifiable, Rubberflex should therefore be assigned a total BIA rate. Petitioner cites to the Department's Analysis Memorandum of December 12, 1996 and the verification report, which document Rubberflex's uncooperativeness due to misreportings, inaccuracies and omissions of certain information. Petitioner therefore argues that the Department should assess a margin which corresponds to criteria outlined in the Department's Antidumping Manual; * * * when a substantial amount of a response does not verify, the Department will normally assign the highest margin for the relevant class or kind of merchandise among (1) the margins in the petition, (2) the highest calculated margin of any respondent within that country * * * *See U.S. Department of Commerce, Antidumping Manual,* July 1993, Ch. 6, at 3. Further, Petitioner disputes that Rubberflex's claimed errors are minor. Petitioner contends that Rubberflex's purported justification for such errors, which Rubberflex claims were the result of year-end accounting adjustments, are unsubstantiated, and unpersuasive. Petitioner contends that any year-end adjustments should have been reported long before verification. Petitioner emphasizes that even minor errors would nevertheless generate an inaccurate margin calculation, which would place the U.S. industry at a disadvantage, given that extruded rubber thread is a commodity, price-sensitive product.

Petitioner emphasizes that Rubberflex did not submit to the Department a listing of errors at the commencement of verification, nor was petitioner served such a list, as required by the Department's regulations. Petitioner contends that Rubberflex's claim that the Department was advised at the

commencement of verification regarding certain errors in its submissions is therefore of no consequence.

DOC Position: We disagree with Rubberflex that the Department was able to verify Rubberflex's questionnaire response and tie all of the information provided in the original response to the trial balance, and ultimately to the audited financial statements. We have addressed this issue in the *Best Information Available for Rubberflex* section of this notice.

Comments Concerning Other Respondents

Comment 28: ESP versus PP Sales. The petitioner alleges that Heveafil's back-to-back sales are ESP, and not PP sales, as reported in the questionnaire response. The petitioner argues that the name back-to-back sales indicates that the U.S. subsidiary makes the sale and determines the price of the merchandise in the United States. Petitioner also notes that both Heveafil's and Filati's April 24, 1995 questionnaire responses indicate that the company's per-unit price is not fixed until the U.S. subsidiary issues the invoice to the U.S. customer.

Petitioner further contends that the Department has found that sales made under circumstances like those made by Heveafil and Filati are ESP sales. Petitioner notes that in *Brake Drums and Brake Rotors from the PRC: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 61 FR 53190, 53194 (October 3, 1996), the Department stated that the responsibilities of the U.S. affiliates go well beyond those of a processor of sales related documentation or a communication link and therefore designated the sales in question as ESP sales. Petitioners note that in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 51882, 51885 (October 4,1996), the Department found it more appropriate to determine that sales were CEP sales where: (1) The U.S. subsidiary was the importer of record and took title to the merchandise; (2) the U.S. subsidiary financed the relevant sales transactions; (3) and the U.S. subsidiary assumed the seller's risk. Petitioner argues that Heveafil's and Filati's sales meet these criteria.

Heveafil and Filati contend that the Department has repeatedly treated back-to-back sales as PP sales in the original investigation and in all prior administrative reviews. They note that Commerce verified that the characterization of the sales is correct in both the original investigation and the first administrative review.

Specifically, respondents argue that back-to-back sales must continue to be treated as purchase price sales, in accordance with the Department's practice for determining indirect PP/EP sales as set forth in *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review,* 61 FR 18547 (April 26, 1996). Heveafil and Filati argue that because petitioner has not submitted any new factual information that would warrant altering the treatment of these sales, the Department must not depart from its position in previous determinations. Accordingly, Heveafil and Filati argue that back-to-back sales conform to the Department's practice in the following ways: (1) Sales were made prior to importation; (2) the subject merchandise was shipped directly to the unrelated customer without entering the inventory of the related selling agent; (3) direct shipment to the unrelated buyer was the customary commercial channel for sales of this merchandise between the parties involved; and, (4) the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers. For the sales made prior to importation, Filati and Heveafil further note that date of sale was reported as the bill of lading date, which occurred before importation, a methodology argued to be consistent with the Department's past determinations.

DOC Position: We agree that Heveafil's and Filati's back-to-back sales are properly treated as PP sales. Each company explained in its questionnaire response that the back-to-back sales were made prior to importation, and shipped directly to the unrelated buyer without ever entering a branch office warehouse. They noted that the branch office served only as a processor of sales related documents. Section 772(b) of the Act states that: The term 'purchase price' means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from a reseller or the manufacturer or producer of the merchandise, for exportation to the United States. Heveafil's and Filati's back-to-back sales fall within the criteria for purchase price sales set forth in section 772(b) of the Act. Since there has been no record evidence submitted in this segment of the proceeding that would cause us to alter our treatment of these sales as PP sales, we are not making any changes to our calculations.

Comment 29: Adjustments for Countervailing Duties (CVDs) Paid. Heveafil, Filati and Rubfil contend that the Department must increase the U.S. price for certain countervailing duties paid on imports of the subject merchandise pursuant to the CVD order. In accordance with section 772(d)(1)(D) of the Act, the Department should increase U.S. price by the amount of any countervailing duty imposed on the subject merchandise to offset an export subsidy. The Department, however, has not made adjustments nor increased U.S. price for export subsidies if foreign market value (FMV) has been based on CV. Respondents note that the Department has declined to make adjustments when FMV is based on CV, on the grounds that any benefit conferred through the export subsidy is reflected in the production costs as well as in U.S. price. (*See Notice of Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia,* 61 FR 54767 (October 22, 1996).

Respondents assert that export subsidies, specifically income tax holidays and income tax abatements, are not reflected in a company's production costs and must be included in an adjustment to U.S. price. They note that income taxes are not an element of the cost of production. Respondents note that the following Malaysian export subsidy programs found in the second and third countervailing duty reviews, qualify as income tax holidays or income tax abatements and thus, should be used in an adjustment to U.S. price: (1) Pioneer Status; (2) Abatement of Income Tax based on Ratio of Export Sales to Total Sales; (3) Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports; (4) Industrial Building Allowance; and, (5) Double Deduction for Export Promotion Expenses.

DOC Position: We agree with respondents that the programs: (1) Pioneer Status, (2) Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales, (3) Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports, (4) Industrial Building Allowance, and (5) Double Deduction for Export Promotion Expenses have been found countervailable and classified as export subsidies in the most recently completed countervailing duty review, *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review,* 60 FR 55272 (October 25, 1996).

Therefore, in accordance with section 772(d)(1)(D) of the Act, we increase U.S. price by the amount of any

countervailing duty imposed on the merchandise * * * to offset an export subsidy. The two most recently completed CVD reviews, *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review,* 61 FR 55272 (October 25, 1996) for calendar year 1993 and *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review,* 60 FR 51982 (October 4,1995) covering calendar year 1994, apply to this review. The calendar year 1993 CVD review found country-wide *ad valorem* net subsidies of 1% for all companies, of which 0.28% consisted of export subsidies. Since this total net subsidy rate is not *de minimis* within the meaning of 19 CFR 355.7 (section 355.7 of the Department's regulations), countervailing duties will be imposed and we must increase U.S. price by the amount of any countervailing duty imposed on the merchandise * * * to offset an export subsidy. In the CVD review covering calendar year 1994, we found company-specific *ad valorem* net subsidies of 0.23% for Heveafil, 0.19% for Rubberflex, 0.38% for Rubfil and 1.39% for Filati (of which 0.15% constituted export subsidies). These net subsidy rates, with the exception of Filati's, are *de minimis* within the meaning of section 355.7 of the Department's regulations, and thus, duties will not be imposed within the meaning of section 772(d)(1)(D) of the Act. Since Filati's rate during both of these two CVD review periods was not *de minimis* within the meaning of section 355.7 of the Department's regulations, we therefore increased U.S. price in the antidumping duty calculation for Filati by the amount of the countervailing duty imposed on the subject merchandise to offset the export subsidies. The amount of duty imposed to offset export subsidies is 0.28% for the period October 1, 1993 through December 31, 1993, and 0.15% for the period January 1, 1994 though September 30, 1994. We made no adjustments for Rubberflex since we used BIA to determine the margin.

However, we do not increase U.S. price under section 772(d)(1)(D) of the Act when, like the U.S. price, the foreign market value already reflects the benefit of the export subsidies, such as in the case of Heveafil and Rubfil. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from India,* 60 FR 10545, 10550 (February 27, 1996). FMV for both Rubfil and Heveafil was based on third-country sales and CV in this review. With respect to exports to third-country markets, respondents receive the same benefits from export subsidies as with exports to the United States. Therefore, the benefits from the export subsidies were reflected in both the U.S. price and the FMV and no adjustment was made to U.S. price. For those sales where CV was used as the basis for FMV, we used third-country SG&A expenses, as well as third-country profit in determining CV for both companies. Since third-country SG&A and profit reflect the benefits from the export subsidies, we have similarly made no adjustment to U.S. price for the benefits from export subsidies.

Comment 30: Import Duties. Filati claims that the Department erred in not making an adjustment for TAXH, which represents the impact of a duty imposed on imported inputs used to produce rubber thread which will later be exported, and is collected only on home market sales. Filati notes that TAXH is not collected on export sales. It claims that TAXH is included in the price of its home market sales and is passed on to its Malaysian customers, and, therefore, constitutes an indirect tax imposed directly upon the foreign like product which has not been collected on the subject merchandise. Therefore, Filati argues that TAXH must be added to U.S. price in accordance with section 772(d)(1)(C) of the Act. Alternatively, Filati proposes that the Department treat TAXH as a difference in circumstances of sale, and make a downward adjustment to FMV, in accordance with section 773(a)(4)(B) of the Act.

Petitioner disputes Filati's arguments. It claims that Filati did not claim that the home market prices it reported to the Department include these indirect taxes. Petitioner notes that, as a general matter, respondents usually report home market prices to the Department already exclusive of indirect taxes. As a result, petitioner argues that TAXH should not be netted from reported home market sales.

DOC Position: We disagree that these expenses represent a tax within the meaning of section 772(d)(1)(C). Filati's April 24, 1995 questionnaire response identifies the expense reported in the TAXH column as a duty on imported merchandise. It is imposed when the goods are sold in the home market, and remains uncollected when the subject merchandise is exported. Consequently, contrary to the Filati's characterization of the expense, the expenses recorded in the TAXH columns represent a duty, and not a tax. Filati explains that it includes the amount of this duty in its home market price and passes it on to its customers. The duty is neither added to nor included in the price of the export goods. Because this duty is only collected on home market sales, and not on export sales, we have determined it to be an uncollected duty within the meaning of section 772(d)(1)(B) of the Act, rather than an uncollected tax within the meaning of section 772(d)(1)(C) of the Act. Consequently, pursuant to section 772(d)(1)(B) of the Act, we have revised our calculations by adding the amount of the uncollected duty to the U.S. price.

Comment 31: Assessment for Filati with Respect to Re-exports of Covered Merchandise. Filati notes that the Department determined a rate of 0.00% for the preliminary results of review. It claims that, should the Department determine a margin for the final results of review, it should take Filati's re-exports of covered merchandise into account when determining the assessment rate. Filati contends that it is the Department's long-standing policy, which has been upheld by the U.S. Court of Appeals for the Federal Circuit (*The Torrington Company* v. *United States,* 82 F.3d 1039 (Fed. Cir. 1996)), not to calculate or collect antidumping duties on subject merchandise that is re-exported without any sale to unaffiliated parties in the United States. Filati contends that the Department cannot calculate or collect antidumping duties regarding such imports, because in the absence of sales in the United States, there is no basis for calculating United States price. Thus, Filati explains, where a respondent provides evidence that merchandise has been re-exported, the Department has modified its assessment methodology formula to account for the re-exports. Filati argues that it provided evidence of such entries in its September 23, 1996 supplemental response and that there were no computer programming instructions in the preliminary results of review to accommodate such re-exports. Filati further argues that the Department should structure its assessment instructions along the lines outlined in the Department's proposed regulations (by dividing the total duties calculated for the period of review (PUDD) by the entered value of the sales during the POR, and directing Customs to apply the resulting *ad valorem* rate to entries in the POR) as modified by the ''per-unit'' methodology used in the Department's August 31, 1992 memorandum to Richard W. Moreland, *First Administrative Review of 3.5 Inch Microdisks and Coated Media Thereof from Japan (Microdisks), Decisions Made with Respect to Issuing Assessment Instructions for all Five*

Japanese Companies which had an either PP and ESP Sales Transactions of 3.5-Inch Microdisks and Coated Media. Filati argues that this new *ad valorem* assessment rate should be calculated by dividing PUDD by the entered value of sales and then multiplying the result by the value of entries minus the value of re-exports divided by the value of entries (PUDD/entered value of sales* (value of entries-value of re-exports)/ value of entries).

DOC Position: We have recalculated the margin for Filati and found that none of the sales were made at prices that incurred a margin. Therefore, the cash deposit rate and the assessment rate is zero and this issue is moot.

Comment 32: The Calculation of the Average Actual Profit for Constructed Value. Petitioner contends the Department erroneously used Heveafil's, Filati's and Rubfil's average actual profit on both profitable and unprofitable sales for the profit figure in the CV calculation. Petitioner argues that only profit on profitable sales should be used in the calculation.

Respondents dispute petitioner's contention, arguing that the Department calculates profit for CV without excluding below-cost sales. In support of its argument, respondents rely on *Federal-Mogul Corp.* v. *United States*, 918 F. Supp. 386, 403 (CIT 1996) and *Torrington Co.* v. *United States*, 881 F. Supp. 622, 633 (CIT 1995), as well as a number of results of reviews of *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof.*

DOC Position: We agree with respondents. Section 773(e)(1)(B)(ii) of the Act states that the amount of profit in the constructed value of the imported merchandise shall not be less than 8 percent of the sum of such general expenses and cost. The Act does not require the Department to use only above cost sales in its calculation of profit for CV. This position has been upheld in the court cases mentioned above. Therefore, we have made no change to our calculations.

Comment 33: The Use of Color as a Model Match Criterion. Petitioner argues that color should be excluded as a matching criterion. Petitioner cites *Melamine Institutional Dinnerware from Taiwan: Final Determination of Sales at Less Than Fair Value (Melamine),* 62 FR 1726, at 1773 (January 13, 1997), in which the Department stated that [c]olor is not a matching criterion in this investigation; thus, it is inappropriate to treat these products, if otherwise identical, as identical for purposes of model matching.

According to respondents, color should not be excluded as a matching criterion. Since color was used in the original investigation and subsequent reviews, the Department must apply the same matching criteria in this period of review.

DOC Position: We agree with respondents that color is an appropriate model matching criterion in this case. The Department has consistently used color as a product matching criteria in the investigation and reviews of the AD order. As we stated in our response to Comment 3 in the *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 57 FR 38465, 38468 (August 25, 1992) because color can materially affect cost and be important to the customer and the use of the product, the Department determined at an early stage of this investigation that color should be included among the several product matching criteria. *See, Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 57 FR 38465, (August 25, 1992). At this time, petitioner supported this decision and has since not offered any substantive reasons for changing the matching criteria. Moreover, color is a characteristic fully in accordance with the matching criteria as outlined in the January 26, 1994 memorandum to the file, entitled *Changing the Department's Questionnaire Order of the Product Concordance.* Petitioner did not comment on this memo which ranked color as third in the level of importance for the product matching criteria. With respect to *Melamine,* this determination covers a product with different physical characteristics, different uses and different expectations by the ultimate purchasers and, therefore, is irrelevant to this case.

Comment 34: Heveafil's Reported Cost Figures. Petitioner notes that Heveafil reported more than one cost figure for a number of products without providing any explanation for the provision of more than one weighted-average cost. In addition, petitioner notes that in its preliminary results of review, the Department erred in using the average of these cost figures to calculate the cost of production for Heveafil. Petitioner argues that by using this average cost, rather than the highest available cost, Heveafil benefits from the unexplained ambiguity in the response.

DOC Position: We disagree. Heveafil reported more than one per-unit cost of production for certain products in the 1994–1995 review, but did not have this data problem in the 1993–1994 review. Therefore, we have made no change to our calculation.

Comment 35: Rebates in the Calculation of a Home Market Price for comparison to COP. Petitioner asserts that the Department failed to deduct Heveafil's rebates from home market prices prior to conducting the sales below cost test.

DOC Position: As indicated on lines 76 and 97 of the third-country sales program issued in the preliminary results of review, we have taken rebates and discounts into account in our determination of the appropriate third-country price to be compared with the cost of production in our cost test. Therefore, we have made no change to our calculation.

Comment 36: Marine Insurance. Petitioner asserts that Rubfil did not explain how it calculated its reported cost of marine insurance. Accordingly, it cannot be determined if marine insurance was correctly calculated. Petitioner therefore contends that the Department should use, as BIA, the highest unit U.S. marine insurance cost of U.S. sales by Rubfil.

Rubfil responds that in its April 27, 1995 response, it explained that marine insurance was paid according to the terms of a global insurance policy that covers all risks associated with the shipment of merchandise from Rubfil's factory to its customers throughout the world. Rubfil provided a copy of the insurance agreement in exhibit C–1, which did not explicitly spell out the per-shipment terms of the policy.

DOC Position: In its December 19, 1996 *Analysis Memorandum for the Preliminary Results of Review* for Rubfil, the Department noted that Rubfil did not fully explain its calculations for marine insurance. However, we used the information provided in the questionnaire response to calculate our margins. We did not request Rubfil to submit further information, and there is no basis for making adverse inferences as suggested by petitioner. Therefore, we have not changed our calculations in this regard.

Final Results of Review

As a result of comments received we have revised our preliminary results and determine that the following margins exist for the period October 1, 1993 through September 30, 1994:

Manufacturer/exporter	Percent margin
Heveafil Sdn. Bhd	0.36
Rubberflex Sdn. Bhd	29.83
Rubfil Sdn. Bhd	29.83
Filati Lastex Elastofibre (Malaysia)	0.00

Manufacturer/exporter	Percent margin
Rubber Thread International	(**)

** There were no shipments or sales of covered merchandise that were subject to this review. The company was not investigated/reviewed for earlier periods.

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service. Since the final results for the more current review period, October 1, 1994 through September 30, 1995 were published on June 20, 1997, the cash deposit instructions contained in that notice will apply to all shipments to the United States of subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 20, 1997. The dumping margins established for the October 1, 1993 through September 30, 1994 period will have no effect on the cash deposit rate for any firm.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 771(i) of the Act (19 U.S.C. 1677f(i)) and 19 CFR 353.22.

Dated: November 12, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30834 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–00003.'' A summary of the application is as follows.

Summary of the Application

Applicant: The Association for the Allocation of Rice Quotas, Inc. (''AARQ''), 3200 Trammell Crow Center, 2001 Ross Avenue, Dallas, Texas 75201–2997.

Contacts: M. Jean Anderson, Esquire, Telephone: (202) 682–7217; Robert M. Bor, Esquire, Telephone: (202) 371–5730.

Application No.: 97–00003.

Date Deemed Submitted: November 14, 1997.

Members (in addition to applicant): Affiliated Rice Milling, Inc., Alvin, Texas; American Rice, Inc., Houston, Texas; Brinkley Rice Milling Company, Brinkley, Arkansas; Broussard Rice Mill, Inc., Mermentau, Louisiana; Busch Agricultural Resources, Inc., St. Louis, Missouri; Cargill Rice Milling, Greenville, Mississippi; Connell Rice & Sugar Co., Westfield, New Jersey; Continental Grain Company, New York, New York; El Campo Rice Milling Company, Louise, Texas; Farmers' Rice Cooperative, Sacramento, California; Farmers Rice Milling Company, Inc., Lake Charles, Louisiana; Gulf Rice Milling, Inc., Houston, Texas; Liberty Rice Mill, Inc., Kaplan, Louisiana; Louis Dreyfus Corporation, Wilton, Connecticut; Newfield Partners Ltd., Miami, Florida; Producers Rice Mill, Inc., Stuttgart, Arkansas; Riceland Foods, Inc., Stuttgart, Arkansas; RiceTec, Inc., Alvin, Texas; Riviana Foods, Inc., Houston, Texas; SunWest Foods, Inc., Davis, California; Supreme Rice Mill, Inc., Crowley, Louisiana; The Rice Company, Roseville, California; and Uncle Ben's, Inc., Houston, Texas. AARQ seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Products shipped under the TRQs will be semi-milled or wholly milled rice, whether or not polished or glazed (item 1006.30 of the Harmonized Tariff Schedules [HTS]), and husked (brown) rice (item 1006.20 of the HTS). Distributions of the TRQ bid proceeds will be based on exports of the above types of rice and rice in the husk (paddy or rough) (item 1006.10 of the HTS).

Export Markets

Rice for which TRQ awards have been made will be exported to the countries that comprise the European Union. Exports that will serve as a basis for distribution of the proceeds of the TRQ awards will be to the European Union as well as all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

Purpose

The Association for the Allocation of Rice Quotas, Inc. (''AARQ'') will manage on an open tender basis the tariff-rate quotas (''TRQs'') for milled and brown rice granted by the European Union (''EU'') to the United States under the U.S.-EU Enlargement Agreement signed July 22, 1996, or any amended or successor agreement providing for EU rice TRQs (''the TRQ System'') and provide for distribution of the proceeds received from the tender process as set forth below.

Membership

Any person or entity domiciled or incorporated in the United States may become a Member of AARQ upon (i) submission to the Administrator of an application accompanied by evidence that the applicant is a rice mill or has exported U.S. rice from the United States, (ii) execution of the AARQ Operating Agreement, and (iii) in the case of applications received after December 31, 1997, payment of a one-time, nonrefundable fee of $3,000 to AARQ. The fee may be waived for small exporters, as determined by the Board of Directors of AARQ.

TRQ Administrator; Implementation

AARQ shall contract with an independent third party Administrator who is not engaged in the production, milling, distribution, or sale of rice, who shall bear responsibility for administering the TRQ System, subject to general oversight and supervision by the Board of Directors of AARQ.

Open Tender Process; Persons or Entities Eligible to Bid

(a) AARQ shall offer TRQ Certificates for duty-free or reduced-duty shipments of rice to the EU on open tender to the highest bidders. All U.S. TRQ quantities (in metric tons) shall be allocated through the Open Tender Process for such tranches (''TRQ Tranches'') as may be provided for in the relevant EU regulations. The Open Tender Process shall constitute the sole and exclusive mechanism by which AARQ allocates TRQ quantities.

(b) Any person or entity incorporated or domiciled in the United States, whether or not a Member of AARQ, shall be eligible to bid in any Open Tender Process.

Notice

The Administrator will publish notice (''Notice'') of each Open Tender Process to be held for the allocation of TRQs for each TRQ Tranche in the Journal of Commerce, and at the discretion of AARQ in other publications of general circulation within the U.S. rice industry. The Notice will invite independent bids and will specify (i) the total amount (in metric tons) of each TRQ to be allocated pursuant to the applicable TRQ Tranche; and (ii) the date on which all bids for TRQ Certificates must be submitted to and received by the Administrator (the ''Bid Date''). The Notice will normally be published not later than 45 days prior to the opening of the TRQ Tranche; if EU decisions on the opening of TRQs or EU regulations necessitate a condensed timetable for notice and bidding, the Administrator will publish the required Notice as promptly as possible after the EU announcements, and will in any event specify a Bid Date that is at least 5 working days after publication of the Notice. Bids may be submitted by hand delivery or facsimile, and must be received by the Administrator by 5:00 p.m. EST on the Bid Date.

Form of Bid; Performance Security

(a) A bid shall be submitted on a form provided by the Administrator and shall state (i) the name, address, telephone, and facsimile or telex number of the bidder; (ii) the form of rice and quantity in metric tons bid, with a minimum bid quantity of twenty (20) metric tons; (iii) the bid price in U.S. dollars per metric ton; and (iv) the total value of the bid.

(b) The bid form shall contain a provision, signed by the bidder, that the bidder agrees that any dispute that may arise relating to the bidding process or the award of TRQ Certificates shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(c) The bidder shall submit with its bid(s) a performance bond, irrevocable letter of credit drawn on a U.S. bank, cashier's check, wire transfer, or equivalent performance security, in a form approved by AARQ and for the benefit of an account designated by the Administrator, in the amount of $50,000 or the total value of its bid(s), whichever is less. Such performance security shall be forfeited if the bidder fails timely to pay for TRQ Certificates awarded to it. At the option of a successful bidder, its performance security may be applied to the price of its successful bid(s), or retained as security for a subsequent Open Tender Process. Any performance security not forfeited, applied to a bid price, or retained as future security shall be returned to the bidder promptly after the close of the Open Tender Process.

(d) The contents of the bids shall be treated by the Administrator as confidential and may be disclosed only to another neutral third party as necessary to ensure the effective operation of the TRQ System; provided, however, that after issuance of all TRQ Certificates in an Open Tender Process, the Administrator shall promptly notify all bidders of and release to the public (i) the total tonnage for which TRQ Certificates were awarded under the milled rice TRQ Tranche and the brown rice TRQ Tranche, respectively, and (ii) the price per metric ton of the highest successful bid for each TRQ Tranche.

TRQ Certificate Awards

(a) Following the close of the bidding period, after having carefully reviewed each apparently high bid to ensure its conformity with applicable requirements, the Administrator shall notify each high bidder that its bid(s) have been determined to be high bid(s). If two or more bidders have submitted identically priced high bids that together cover more than the available tonnage, the Administrator shall divide the award among those bidders in proportion to the quantities of their bids and offer the proportionate shares to each of those bidders. If any of those bidders rejects all or part of the quantity offered, it shall be offered first to the remaining such bidder(s) and then to the next highest bidder.

(b) Promptly after issuance of the notification that its bid is a high bid, a bidder shall pay the full amount of the bid to the Administrator either by certified check or by wire transfer to an account designated by the Administrator. If the bidder fails timely to pay the full amount of the bid, the Administrator shall revoke the award, and grant the award to the next highest bidder.

(c) If the total bids received cover less than the tonnage of the relevant TRQ Tranche, the unused portion shall, to

the extent consistent with EU regulations, be carried over to a succeeding Tranche. In any Tranche as to which EU regulations prohibit such carry-over, should total bids received cover less than the total tonnage available in the Tranche, the unused portion shall be offered to all successful bidders, in proportion to the size of their respective awards, at the lowest successful bid price.

(d) The full amounts received from successful bidders shall be deposited in an interest-bearing account designated by the Administrator in a financial institution approved by the Board of Directors of AARQ.

Delivery of TRQ Certificates

(a) Promptly after receiving the full amount of a successful bid, the Administrator shall transmit to the successful bidder a TRQ Certificate that designates the quantity and form of rice covered by the bid and any known expiration date pursuant to EU regulations.

(b) To facilitate monitoring of shipments of packaged rice pursuant to EU regulations, the TRQ Certificate shall include a space for designation by the exporter of the type of packaging, if any, of the rice covered by the TRQ Certificate.

(c) TRQ Certificates issued to successful bidders shall be freely transferable.

Disposition of Tender Proceeds

(a) The proceeds of Open Tender Processes shall be applied and distributed as provided in paragraphs (b) through (g) below.

(b) Operating expenses of AARQ, including legal, accounting, and administrative costs of establishing and operating the TRQ System, shall be paid as incurred from tender proceeds as they become available, pursuant to authorization by the AARQ Board of Directors.

(c) From the remaining proceeds of tenders as soon as available—

(i) The U.S. Rice Industry Coalition for Exports, Inc. (''US RICE'') shall be reimbursed for its documented TRQ-related legal expenses up to $450,000.

(ii) The Rice Millers' Association (''RMA'') shall be reimbursed up to $450,000 (A) for its documented TRQ-related legal and administrative expenses, (B) for payment of up to $100,000 to the Committee for Fair Allocation of Rice Quotas for its documented TRQ-related legal expenses, (C) for payment of up to $25,000 to each individual member of the RMA/ETCR for its documented third party legal expenses in calendar years 1996 and 1997 in connection with the establishment of an ETC for administration of the TRQs, and (D) for payment of $25,000 to each member of the RMA/ETCR that documents that it shipped a minimum of 500 metric tons of milled or brown rice to the EU in calendar year 1996 and has not received a distribution under item (C). If there are insufficient funds available to make payments provided for in subparagraphs (c)(ii)(C) and (D), the amount that each RMA/ETCR member would otherwise be entitled to receive will be reduced by a pro-rata amount so that the total distribution will be equal to the amount available for this purpose.

(d) From the proceeds of tenders in each of the first two years of operations, each Member of AARQ that documents to the Administrator exports of milled or brown rice to Austria, Sweden, or Finland during 1990–1994 shall be paid up to $75 per metric ton of its documented 1990–1994 annual average of such shipments, provided, however, that the total amount paid to all eligible Members under this provision may not exceed $1,800,000 in each of the two years. If $1,800,000 is insufficient to permit payments of $75 per metric ton, the amount that each eligible Member would otherwise be entitled to receive will be reduced pro rata so that the total distribution will be equal to the amount available for this purpose. Any documented costs previously incurred by the RMA in reviewing and analyzing documentation of member shipments to Austria, Finland, or Sweden during 1990–1994 shall be considered a cost of administering the TRQ System, pursuant to paragraph (b) above.

(e) Of the proceeds remaining at the end of each year of operations—

(i) Twenty-two percent (22%) shall be distributed to the Rice Foundation, its successors, or assigns, solely for research purposes and expenses related thereto. Disbursement of the funds by the Rice Foundation is the subject of a separate agreement between the Rice Foundation and the State Rice Producer Legislative Groups of Arkansas, California, Louisiana, Mississippi, Missouri, and Texas, and any dispute under that agreement shall not be a matter for resolution under this Operating Agreement.

(ii) Thirty-nine percent (39%) shall be distributed to Members exporting U.S. paddy, brown, and/or milled rice to the EU based on their percentage shares by volume, adjusted as provided in item (iv) of this subparagraph, of Members' exports to the EU during the year.

(iii) Thirty-nine percent (39%) shall be distributed to Members exporting U.S. paddy, brown, and/or milled rice to all non-EU world destinations, based on their percentage shares by volume, adjusted as provided in item (iv) of this subparagraph, of Members' non-EU worldwide exports during the year.

(iv) The computation of Members' exports under this paragraph (e) shall be made on a milled rice equivalent basis using U.S. Department of Agriculture standard equivalency factors.

(f) A year shall be the calendar year, except that if an Open Tender Process occurs in 1997, the first year of operations shall be the period from the date of that tender through December 31, 1998.

(g) Notwithstanding the foregoing provisions of this paragraph, promptly upon implementation of the TRQ System by the EU, the Board of Directors shall consider and may direct distributions during 1998 of proceeds from tenders of a major portion of the TRQ tonnage to be offered in the first year of operations, basing distributions pursuant to paragraph (e)(ii) and (iii) on Members' exports during calendar year 1997.

Eligibility for Distributions; Submission of Export Documentation.

Any Member of AARQ will be eligible to participate in distributions of tender proceeds if: (i) it is a member under the ETCR issued to AARQ by the U.S. Department of Commerce on the date of a distribution or its membership under the ETCR is the subject of an ETCR amendment pending with the Department of Commerce on that date, and (ii) it has timely submitted the required export documentation to the Administrator.

Distribution of Tender Proceeds

Within sixty (60) days of the submission of the required documentation for the year or as soon as practicable thereafter, the Administrator shall notify each Member, on a confidential basis, of its percentage share of U.S. rice exports by Members to the EU and/or non-EU destinations, as applicable, for the previous year, and the dollar amount of its distribution. As promptly as possible following such notification, the Administrator shall cause the distributions to be made to eligible Members. If an amendment to include an eligible Member under the ETCR is pending at the Department of Commerce, the Administrator shall cause such Member's distribution to be held for distribution promptly upon issuance of the amendment.

Arbitration of Disputes

Any controversy or claim arising out of or relating to the TRQ System or to

the AARQ Operating Agreement, or the breach thereof, including inter alia a Member's qualification for a distribution, the interpretation of documents, or the distribution itself, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Confidential Information

Confidential export documentation and any other confidential information submitted to AARQ by an applicant for membership, by a Member in connection with qualifying for a distribution, or by any person in connection with the TRQ System shall be marked ''Confidential'' and submitted to the Administrator, who shall maintain its confidentiality. The Administrator shall not disclose such confidential information to any Member other than the submitter, or to any officers, agents, or employees of any Member other than the submitter, and shall not disclose such confidential information to any other person except to another neutral third party as necessary to make the determination for which the information was submitted, to process distributions, or in connection with the arbitration of a dispute.

Annual Reports

In accordance with its Bylaws, AARQ shall publish an annual report, including a statement of the operating expenses and aggregate data on the distribution of proceeds, as reflected in the audited financial statement of the AARQ TRQ System.

Amendments

During the first eight years of the operation of the TRQ System, any amendment to the following fundamental provisions of the TRQ System shall take effect only upon the unanimous approval by all Voting Members of AARQ: provisions relating to (i) qualification for membership in AARQ, except the amount of the nonrefundable fee, (ii) the paragraph entitled ''Open tender process; Persons or entities eligible to bid,'' and (iii) the disposition of tender proceeds. In addition, no reduction may be made in the distribution required to be made to the Rice Foundation for research and expenses related thereto, unless approved by unanimous consent of the Rice Producer Legislative Groups of Arkansas, California, Louisiana, Mississippi, Missouri, and Texas. The Board of Directors of AARQ shall otherwise have authority to amend the provisions of the TRQ System as set forth in the Bylaws of AARQ.

Cooperation With the U.S. Government and the European Commission

AARQ will provide whatever information and consultations may be useful in order to ensure effective consultations between the U.S. Government and the European Commission concerning the implementation and operation of the TRQ System. In particular, while maintaining the confidentiality of confidential information submitted by bidders and Members, AARQ will provide its annual report, regular reports following the tender for each TRQ Tranche, reports on distributions of tender proceeds, and/or any other information that might be requested by the U.S. Government. Directly or through the U.S. Government, AARQ will endeavor to accommodate any information requests from the Commission (while protecting confidential data), and will consult with the Commission as appropriate.

Miscellaneous Implementing Provisions

AARQ and/or its members may (i) meet, discuss and provide for an administrative structure to implement the foregoing tariff rate quota management system, assess its operations and provide modifications as necessary to improve its workability, (ii) meet, exchange and discuss information regarding the structure and method for implementing the foregoing tariff rate quota management system, (iii) meet, exchange and discuss the types of information needed regarding the bidding process, distribution of the bid proceeds, and past export transactions that are necessary for implementation of the system, (iv) meet, exchange and discuss information concerning U.S. and foreign agreements, legislation and regulations affecting the TRQ management system, (v) and otherwise meet, discuss and exchange information as necessary to implement the activities described above and take the necessary action to implement the foregoing TRQ management system.

Abbreviated Amendment Procedures

New AARQ members may be incorporated as Members in the Certificate through an abbreviated amendment procedure. Under the procedure, AARQ will notify the Secretary of Commerce and the Attorney General, in writing, of those members of AARQ that wish to be included as Members in the Certificate. The notification will include a certification from each such member of its domestic and export sales of Products in its preceding fiscal year. Notice of the members so identified shall be published in the **Federal Register**. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of the members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not so amend the Certificate within 60 days of publication in the **Federal Register**, such amendment must be sought through the normal amendment procedure.

Dated: November 19, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–30783 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 971031260–7260–01]

Voluntary Product Standard PS 2–92 ''Performance Standard for Wood-Based Structural-Use Panels''; Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice and request for comments on Voluntary Product Standard PS 2–92.

SUMMARY: The National Institute of Standards and Technology (NIST) provides notice that on behalf of the Department of Commerce NIST is conducting the five-year review of Voluntary Product Standard (VPS) PS 2–92 ''Performance Standard for Wood-Based Structural-Use Panels'' as required by Department Procedures. The Standing Committee for PS 2–92, responsible for maintaining the standard, is assisting NIST in implementing the review which is conducted to determine if the standard has become obsolete, technically inadequate, no longer acceptable to or used by the industry, or inconsistent with law or established public policy. Upon completion of the review, the Standing Committee will make a recommendation to NIST as to whether

the standard should be reaffirmed, amended, revised, or withdrawn.

DATES: Written comments should be supported by written data, views, or arguments and must be received on or before January 23, 1998 to be assured of consideration.

ADDRESSES: Written comments are to be directed to Barbara M. Meigs, Technical Standards Activities Program, Office of Standards Services, Building 820, Room 164, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of PS 2–92 or for additional information are to be directed to Barbara M. Meigs, Technical Standards Activities Program, Office of Standards Services, National Institute of Standards and Technology, *telephone:* 301–975–4025, *fax:* 301–926–1559; *e-mail:* barbara.meigsnist.gov.

SUPPLEMENTARY INFORMATION: Voluntary Product Standard PS 2–92 establishes inspection, test, and labeling procedures for assessing the acceptability of wood-based structural-use panels for construction sheathing and single-floor applications for a variety of products; namely, plywood, wafer board, oriented strand board, structural particle board, and composite panels. It provides performance requirements, adhesive bond durability, panel construction and workmanship, dimensions and tolerances, marking, and moisture content of structural-use panels. The Standard classifies panels by exposure durability and by grade. It provides test methods, a glossary of trade terms and definitions, and a quality certification program whereby agencies can inspect, sample, and test products for qualification under this Standard. Information regarding reinspection practices is provided in an appendix.

PS 2–92, published in 1992, was developed and is maintained in accordance with Department ''Procedures for the Development of Voluntary Product Standards'' established in Part 10, Title 15, of the Code of Federal Regulations (15 CFR Part 10, as amended; 51 FR 119 dated June 20, 1986).

Section 10.10 of the Procedures requires that each VPS standard be reviewed by the Department with such assistance of the Standing Committee (responsible for maintaining the standard) or others, as may be deemed appropriate by the Department, within five years after initial issuance or last revision of the standard.

Upon completion of the review of PS 2–92, the Standing Committee for PS 2–92 and NIST will act to reaffirm, amend, revise, or withdraw the standard, as appropriate.

Authority: 15 U.S.C. 272.

Dated: November 17, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–30717 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of Public Meeting and Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: In accordance with the National Environmental Policy Act and with section 315 of the Coastal Zone Management Act of 1972; as amended, the State of Florida and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct a public scoping meeting on the proposed Guana Tolomato Matanzas (GTM) National Estuarine Research Reserve (NERR) in Florida to solicit comments on significant issues related to the preparation of a Draft Environmental Impact Statement (DEIS) and Draft Management Plan (DMP). The DEIS and DMP address research, monitoring, education and resource protection needs for the reserve.

DATE AND TIME: Wednesday, December 10, 1997 at 7:00 p.m.

ADDRESSES: St. Johns County Auditorium, Government Complex, 4020 Lewis Speedway, St. Augustine, Florida 32095.

FOR FURTHER INFORMATION CONTACT: Anna Marie Hartman, Bureau of Coastal and Aquatic Managed Areas, Division of Marine Resources, Department of Environmental Protection at (850) 488–3456; or Nathalie Peter, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, at (301) 713–3132, ext. 119.

SUPPLEMENTARY INFORMATION: In October 1997, NOAA Sanctuaries and Reserves Division (SRD) approved the nomination of the Guana Tolomato Matanzas (GTM) estuarine systems as a proposed National Estuarine Research Reserve. Research reserves provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs are designed to enhance scientific understanding of the coastal environment and aid in resource management decision making.

The proposed GTM Reserve encompasses approximately 53,333 acres of publicly owned lands and waters in St. Johns and Flagler Counties on the east coast of Florida. It consists of two sites: the Guana River and Tolomato River estuarine system located north of St. Augustine and the Matanzas River south of St. Augustine. The proposed reserve is an area important to many resident and migratory fish and waterfowl and a variety of threatened and endangered species, including the manatee, the least tern, and the loggerhead, green and leatherback turtles. Major habitat types include beach dunes, salt and freshwater marshes, cypress and hardwood swamps, shell mounds, and xeric hammocks. The Matanzas Inlet is the last naturally occurring inlet on the east coast of Florida that has not been subject to dredging and other manmade disturbances.

The Department of Environmental Protection (DEP) has developed a draft management plan for the NERR which identifies specific needs and priorities related to research, monitoring, education, and stewardship at the proposed site. It also presents draft action plans for administration, a volunteer program, public access, facilities/construction, and boundaries/land acquisition.

At the public meeting, DEP and NOAA will provide a synopsis of the draft management plan and will solicit comments on significant environmental issues that will be incorporated into a DEIS.

The public meeting will be held in St. Augustine, Florida at the St. Johns County Auditorium, Government Complex, 4020 Lewis Speedway, on December 10, 1997, from 7:00 p.m. to 9:00 p.m.

Interested parties who wish to submit suggestions, comments or substantive information regarding the scope or content of the proposed DEIS/DMP are invited to attend the above meeting. Parties who wish to respond in writing should do so by December 26, 1997, to Anna Marie Hartman, Department of Environmental Protection, Division of Marine Resources, Bureau of Coastal and Aquatic Managed Areas, 3900 Commonwealth Boulevard, MS 235 Tallahassee, Florida 32399–3000, or Nathalie Peter, NOAA Sanctuaries and

Reserves Division, 1305 East-West Highway N/ORM2, Silver Spring, MD 20910.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: November 19, 1997.

Captain Evelyn J. Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–30829 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

November 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 1998 through December 31, 1998 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period. The 1998 limits for all categories except 331, 341 and 641 have been reduced for carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	483,925 dozen.
331	1,229,621 dozen pairs.
334	140,004 dozen.
335	251,378 dozen.
336/636	449,849 dozen.
338/339	1,303,162 dozen.
340/640	2,945,879 dozen
341	2,580,983 dozen.
342/642	422,226 dozen.
347/348	2,196,353 dozen.
351/651	670,582 dozen.
352/652	10,004,398 dozen.
363	24,995,418 numbers.
369–S [1]	1,675,461 kilograms.
634	489,811 dozen.
635	317,340 dozen.
638/639	1,652,648 dozen.
641	1,080,730 dozen.
645/646	388,106 dozen.
647/648	1,381,355 dozen.
847	733,449 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30843 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

November 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bulgaria and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month limit
410/624	2,500,387 square meters of which not more than 836,774 square meters shall be in Category 410.
433	12,691 dozen.
435	22,849 dozen.
442	14,806 dozen.
444	69,296 numbers.
448	26,150 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 24, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30840 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

November 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Czech Republic and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following limits:

Category	Twelve-month restraint limit
410	1,590,899 square meters.
433	6,248 dozen.
435	4,111 dozen.
443	76,167 numbers.
624	2,112,371 square meters.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated October 25, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30842 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

November 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Slovak Republic and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998 in excess of the following limits:

Category	Twelve-month restraint limit
410	415,456 square meters.
433	11,604 dozen.
435	17,527 dozen.
443	96,940 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated October 25, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30841 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation and Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan; Correction

November 19, 1997.

On page 58945, second column, Annex I, replace the HTS numbers for part Category 347–W with the following HTS numbers:

347–W	Men's and boys' woven cotton pants: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30839 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Application of FutureCom, LTD. as a Contract Market in Live Cattle Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of application.

SUMMARY: FutureCom has applied for designation as a contract market for the automated internet-based trading of cash-settled live cattle futures and options. FutureCom has not previously been approved by the Commission as a contract market in any commodity, thus, in addition to the terms and conditions of the proposed futures and options contracts, FutureCom has also submitted proposed trading rules, rules of government, and other materials to meet the requirements for a board of trade seeking initial designation as a contract market. Notice of FutureCom's application was previously published for public comment on January 31, 1997 (62 FR 4730). Many comments received in response to that notice expressed the opinion that there were insufficient materials and information available concerning the applicant, thus commenters were unable to respond adequately to the request for comment. Since the initial publication, the Commission has received additional materials and information in support of the application. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets (''Division'') has determined to again publish the proposal for public comment. The Division believes that publication of the proposal for comment at this time is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent

with the purposes of the Commodity Exchange Act. The Division seeks comment regarding all aspects of FutureCom's application and addressing any issues commenters believe the Commission should consider.

DATES: Comments must be received on or before December 24, 1997.

FOR FURTHER INFORMATION CONTACT: With respect questions about the terms and conditions of the proposed futures and option contracts, please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, at Three Lafayette Centre, 21st Street NW, Washington, DC 20581; Telephone: (202) 418–5273; Facsimile number: (202) 418–5527; or Electronic mail: flinse@cftc.gov. With respect to questions about the trading rules and rules of government, please contact Lois Gregory, Division of Trading and Markets, at the same address; Telephone: (202) 418–5483; Facsimile number: (202) 418–5536; or Electronic mail: lgregory@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

FutureCom, LTD., a limited Texas partnership, has applied for designation as a contract market for the automated trading over the internet of cash-settled live cattle futures and options. FutureCom has not been approved previously by the Commission as a contract market in any commodity, thus, in addition to the terms and conditions of the proposed futures and options contracts, FutureCom has also submitted proposed trading rules, rules of government, surveillance and compliance procedures, system security documentation, and other materials and documents to meet the requirements for a board of trade seeking initial designation as a contract market.

Notice of FutureCom's application was previously published for public comment on January 31, 1997 (62 FR 4730). Many comments received in response to that notice expressed the opinion that there were insufficient materials and information concerning the applicant available at that time, thus commenters were unable to respond adequately to the request for comment. By letter dated June 20, 1997, the Division informed FutureCom that the running of the one-year review period provided in Section 6 of the Commodity Exchange Act would be stayed with respect to both the proposed futures and the proposed option contract until the Commission received information which fully addressed several major subject areas outlined in the letter. Since the initial publication, the Commission has received a considerable amount of additional material and information in support of the application. Based on the adequacy of the information contained in the submissions received to date, the Division has determined to lift the stay of the one-year review period and to publish again the proposal for public comment. The Division believes that publication of the proposal for comment again at this time is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

FutureCom's affairs are managed under the direction of its Board of Directors and it will operate on a for-profit basis. FutureCom has proposed Bylaw provisions intended to meet requirements of various Commission regulations concerning the composition of governing boards and disciplinary committees. The FutureCom Board has the authority to establish classifications of membership and the qualifications that an applicant for membership must meet.

Each FutureCom member would have to maintain minimum net worth requirements applicable to the member's FutureCom membership classification. Every member would be a clearing member of the Exchange. Any member not in compliance with minimum financial requirements would not be able to engage in transactions except to close out positions.

FutureCom's proposed Bylaws also address trading standards, clearing and settlement, disciplinary proceedings, and arbitration. Trades would be matched in accordance with a trade matching algorithm based on a price-time priority. Traders could enter four types of orders: market, limit, stop, and market-if-touched. The trading standards would require each member to maintain records in accordance with Commission regulations. Bylaws would govern exchange of futures for physicals and position limits. Position limits would vary by trading level assigned to each member. Trading levels would be assigned based upon FutureCom's analysis of the credit risks associated with each applicant.

Each member would enter into an account and clearing agreement with FutureCom which would set forth, among other things, the details of the clearing arrangement, initial margin, margin calls, default, liquidation, trading and clearing fees, and order entry. All orders entered into the FutureCom system would be cleared and settled immediately upon execution through the First National Bank of Amarillo (the ''Clearing Bank'') via a system of automatic electronic debits and credits among traders' accounts. FutureCom and the Clearing Bank have entered into a cash settlement procedures agreement and a custody agreement. Initial margin for any order would have to be on deposit with the Bank before any transaction was executed. Maintenance margin notices would be sent by electronic mail and would specify the date, time and amount due and members would be responsible for receiving and assuring that funds were available to fund an electronic debit. FutureCom would liquidate any position or positions upon any condition of default including failure of a member to meet any margin call.

In the event of a trader default on a margin call, that margin would be delivered by FutureCom to the Clearing Bank on the day the default occurred. FutureCom intends to keep at least one million dollars in the form of a letter of credit on hand with the Clearing Bank for each listed futures and option contract. The amount would be increased according to the open interest in the listed contract to up to eight million dollars for open interest over 80,000 contracts. Additionally, FutureCom will accrue a reserve fund to be held by the Clearing Bank in a separate reserve fund account and be available against member defaults. From the transaction fees assessed in connection with each trade, the Exchange will apply $1.00 per contract to the reserve fund. Losses from trader defaults exceeding the FutureCom guarantee would be borne pro rata by all members according to the number of outstanding open contracts on the day of the default.

FutureCom expects that generally, all members including those members that otherwise maintain an account with an FCM, will enter transactions on FutureCom directly. However, in some cases, FutureCom members may, for a variety of reasons, prefer their FCM or other intermediary, such as their commodity trading advisor, to enter orders into the FutureCom system on their behalf. Any such intermediary, if not a FutureCom member itself, would have to be approved and accepted by FutureCom as an intermediary for the purpose of entering orders into the trading system.[1] The member would

[1] Every member would be required to register the computer(s) he/she/it intended to use to enter orders into FutureCom. Likewise, any intermediary entering orders on behalf of a member would be required to have the computer used to enter

Continued

give the FCM his I.D. and password for the purpose of entering the order as instructed by the member.

The Bylaws prohibit the entering of transactions designed to take advantage of orders entered for another. These prohibitions include any transaction that had been directly or indirectly prearranged, ones that are in the nature of a wash sale, trading ahead, or the disclosing or withholding of orders. FutureCom asserts, however, that generally, it should be far more difficult, if not impossible, for many of the types of unlawful trade practices to occur due to the fact that the predominant number of orders will be entered directly by the member.

FutureCom represents it will use due diligence in maintaining a continuing affirmative action program to secure compliance with various provisions of the Commodity Exchange Act and Commission regulations and with its own Bylaws. This will include trade practice and market surveillance programs designed and described by FutureCom to detect the trade practice abuses mentioned above as well as market manipulation, investigations of alleged violations of other rules, and disciplinary procedures. FutureCom's proposed Compliance Procedures require all intermediaries entering orders on behalf of members to comply fully with the requirements of Commission Regulation 1.35(a–1) consistent with the Commission's advisory relating to alternative methods of compliance with written record requirements.[2] FutureCom expects these records to be generated electronically in connection with the order entry process.

FutureCom intends to ask the National Futures Association (''NFA'') to administer FutureCom's financial surveillance and arbitration programs and examine the books and records of joint FutureCom-NFA members relating to the members' business of dealing in commodity futures and options and cash commodities insofar as such business relates to their dealing on FutureCom. In this regard, therefore, NFA would assume the responsibilities of FutureCom set forth in Commission Regulations 1.51(a)(3) and 1.52(c) for all FCMs that are members of both FutureCom and NFA. Concerning arbitration, Commission Regulation 180.3(b)(4) requires each Commission registrant to include a registered futures association on a list of organizations that are qualified to conduct customer arbitration proceedings. As NFA is required to accept appropriate demands for arbitration, there is no need for a written agreement between FutureCom and NFA regarding delegation of FutureCom's arbitration program to NFA.

The Commission's Office of Information Resources and Management has reviewed the security of the proposed FutureCom trading system and analyzed issues of system vulnerability and issues related to the operation of the electronic trading system.

II. Request for Comments

Any person interested in submitting written data, views, or arguments on the proposal to designate FutureCom should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. The Division seeks comment on all aspects of FutureCom's application for designation as a new contract market that would permit transmittal of orders over the internet and match orders electronically. Comments should also include the proposed clearing and settlement procedures, the ability of FutureCom to fulfill its self regulatory duties, and any other issues commenters believe the Commission should consider. Reference should be made to the FutureCom application for designation as an automated contract market for live cattle futures and options. Copies of the proposed terms and conditions, Exchange rules, compliance procedures, clearing and settlement description, and other related materials are available for inspection at the Office of the Secretariat at the above address. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9. Requests or copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on November 18, 1997.

Alan L. Seifert,

Deputy Director.

[FR Doc. 97–30806 Filed 11–21–97; 8:45 am]

BILLING CODE 6351–01–M

FutureCom orders registered with FutureCom. Only orders from properly registered and approved computers would be accepted into the FutureCom trading system.

[2] ''Alternative Method of Compliance With the Written Record Requirements,'' 62 FR 7675 (February 20, 1997).

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Final Sequestration Report for Fiscal Year 1998 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Final Sequestration Report for Fiscal Year 1998 to the House of Representatives, the Senate, and the Office of Management and Budget.

Mark G. Desautels,

Assistant for Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 97–30854 Filed 11–21–97; 8:45 am]

BILLING CODE 1450–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Airborne Laser Concept of Operations (ABL CONOPS) Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet in Albuquerque, NM, on December 17–18, 1997 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for the Quick Look Study on ABL CONOPS.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–30713 Filed 11–21–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 1999–2000 award year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV, HEA Programs).

DATES: Interested persons are invited to submit comments on or before January 23, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. In addition, interested persons can access this document at the following website: http://www.ed.gov/offices/OPE/Professionals. Once at this website, the reader should go to the ''What's New'' area to locate the 1999–2000 FAFSA.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, ''in cooperation with agencies and organizations involved in providing student financial assistance,'' to ''produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under'' the Title IV, HEA Programs. This form is the FAFSA. In addition, section 483 authorizes the Secretary to include on the FAFSA up to eight non-financial data items that would assist States in awarding State student financial assistance.

Over the past several years, the Secretary, in cooperation with the above described agencies and organizations, has added questions to the form. Those questions were added to accommodate the needs of States that administer State student aid programs, and of institutions of higher education that administer the Title IV, HEA Programs. They were also added to facilitate eliminating or reducing the number of State and institutional forms that a student and his or her family must complete in order to receive student financial assistance.

In a notice published in the **Federal Register** of March 18, 1997, the Secretary noted that the Department of Education was reengineering the FAFSA and looking anew at all the questions on the form. The Secretary asked for comment on questions that applicants were not required to answer in order to have their eligibility and need for Title IV, HEA Programs determined. The Secretary also requested comment with regard to which of the questions were integral to State student aid programs. The Secretary wishes to emphasize that he was not considering eliminating a question merely because he listed that question for comment.

In addition to requesting comments in that notice regarding the 1999–2000 FAFSA, in May and June of this year, the Secretary convened public meetings in New York, St. Louis, San Diego, and Washington, D.C., for the purpose of receiving comments on early drafts of the reengineered FAFSA. Further, at the invitation of the National Association of Student Financial Aid Officers (NASFAA), in July the Department conducted a forum on a later draft of the reengineered FAFSA at NASFAA's annual convention in Philadelphia.

The FAFSA on which comments are requested reflects the many worthy and helpful comments the Department received during the Spring and Summer of this year. The adoption of many of these comments has made the FAFSA easier for applicants to understand and complete.

With regard to the data elements to be included in the FAFSA, it was necessary to balance often competing considerations. Those considerations included whether requested data was necessary for Federal purposes, whether data produced accurate and verifiable information, whether data was needed by a State as part of its State student aid program, and whether the elimination of data on the FAFSA would lead to the reintroduction of State forms. As a result of evaluating those considerations, only five date elements were eliminated.

The reengineered FAFSA differs from the current FAFSA as described below. References to the current FAFSA are to the 1997–98 FAFSA.

- Five data elements were eliminated that provided information that was of marginal value or could be easily obtained by another means. Those data elements are (1) applicant's permanent telephone number (question 10); (2) applicant's course of study (question 29); (3) date applicant expects to graduate (question 31); (4) whether applicant will attend the same college (question 36), and (5) applicant's release of information to state agencies (question 104).
- To make finding the actual application easier and to increase the probability that users will actually read instructions necessary to answer a particular question, the overall length of the document was reduced from 16 pages to eight pages. Instructions and background information were reduced from 12 pages to four pages, with one of these pages consisting of worksheets. To minimize the impact on processing, the application form itself remained four pages.
- To orient users, the first page prominently describes what kinds of aid an applicant may receive using the application and the telephone numbers that users may call for help.
- To serve as a navigational aid, answer fields are highlighted, one color for students and another color for parents. During usability testing, users were especially appreciative of this feature.
- To reduce confusion, the use of shortcut devices was eliminated. For example, users are not asked to navigate coordinates (columns and rows).
- With regard to the ''simplified needs test,'' it was discovered through iterative design and usability testing that it was simpler and less burdensome to have applicants answer questions regarding their assets than it was for them to figure out whether they needed to answer those questions. Also, applicants who did not have to answer asset questions for Federal purposes may have to answer those questions for State purposes. As a result, all applicants will be required to answer asset questions. For the same reasons, the form could not be successfully designed to facilitate the ''zero EFC'' provisions.
- Worksheets were not given a name. Early usability testing showed that users frequently saw the name of a worksheet, assumed it did not apply to them, and ignored it. In later testing, all users looked at the worksheets. This later success was attributed to the fact that the worksheets are not named, the document is now much shorter, and the worksheets are easier to find.
- Users are now advised to complete their tax forms before filling out the FAFSA. Questions relating to filing estimated tax forms were eliminated (questions 56 C and D and 65 C and D).

As a result, more accurate income information should be reported.

- The wording of several questions was simplified and clarified. Instead of asking users for their ''title'', the form explains that males must be registered with the Selective Service and then asks if the users are male and want to be registered.
- The FAFSA no longer asks students whether they plan to attend various semesters on a ¾ time basis. The term ''attending'' was substituted for ''enrolled'' because students had a tendency to fill in only the Fall term, which is the term in which they generally would enroll.
- The FAFSA now asks for the name and address of the institution before it asks for the Title IV code. The FAFSA also tells the applicant where to find the Title IV code.

The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under the procedure for obtaining approval from OMB, ED must first obtain public comment on the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

To accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 19, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Free Application for Federal Student Aid (FAFSA).
Frequency: Annually.
Affected Public: Individuals and families.
Annual Reporting and Recordkeeping Hour Burden:

Responses: 9,568,017
Burden Hours: 6,274,770

Abstract: The FAFSA collects identifying and financial information about a student and his or her family if the student applies for Title IV, Higher Education Act (HEA) Program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used to determine the student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility and need for State and institutional financial aid programs.

[FR Doc. 97–30810 Filed 11–21–97; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 24, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 18, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.
Title: Controlling the Cost of Postsecondary Education.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local and Tribal Gov't, SEAs and LEAs.
Annual Reporting and Recordkeeping Hour Burden: Responses: 75; Burden Hours: 1,500.
Abstract: This first time application package provides information and forms for those wishing to apply for grants that demonstrate projects addressing issues of cost control at postsecondary institutions.

Office of the Chief Financial Officer

Type of Review: New.
Title: Streamlined Clearance Process for Discretionary Grant Information Collections.
Frequency: Annually.
Affected Public: Individuals or households; Business or other for-profit; Not for Profit institutions; State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden: Responses: 1; Burden Hours: 1.
Abstract: This information collection plan provides the U.S. Department of Education with the option of submitting its discretionary grant information collections through a streamlined Paperwork Reduction Act clearance

process. This streamlined information to the Office of Management and Budget (OMB) and, at the same time, publishes a 30-day public comment period notice in the **Federal Register**. OMB will then have 60 days after the public comment period begins to reach a decision on the information collection.

[FR Doc. 97–30760 Filed 11–21–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.200]

Notice of Correction; Graduate Assistance in Areas of National Need Program

The purpose of this notice is to correct the invitational priorities section of the Notice Inviting Applications For New Awards For Fiscal Year (FY) 1998, published in the **Federal Register** on October 27, 1997 (62 FR 55615). The description of activities under Invitational Priority 1 and Invitational Priority 2 was inaccurate.

Invitational Priority 1 should read as follows:

Within the absolute priority specified above, the Secretary is particularly interested in receiving applications from mathematics programs that train Ph.Ds in mathematics who will then train teachers who will specialize in the teaching of mathematics to students at the K–12 level.

Invitational Priority 2 should read as follows:

The Secretary is particularly interested in receiving applications from biology, chemistry, and physics programs that train Ph.Ds who will then train teachers who will specialize in the teaching of biology, chemistry or physics to students at the K–12 level.

For Applications or Information Contact: Cosette H. Ryan, U.S. Department of Education, International Education, International Education and Graduate Programs Service, 600 Independence Ave, SW, Suite 600–B, Portals Building, Washington, D.C. 20202–5247. Telephone: (202) 260–3608. Internet address: cosette__ryan@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1134l–1134q–1.

Dated: November 14, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–30710 Filed 11–21–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–164]

Application To Export Electric Energy; Constellation Power Sources, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Constellation Power Source, Inc. (CPS), a power marketer, has submitted an application to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before December 24, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On November 12, 1997, CPS applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada, as a power marketer, pursuant to section 202(e) of the FPA. Specifically, CPS has proposed to transmit to Canada electric energy purchased from electric utilities and other suppliers within the U.S.

CPS would arrange for the exported energy to be transmitted to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. Each of these transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with Kathleen C. Jones, Counsel, Constellation Power Source, Inc., 39 W. Lexington Street, Room 1120, Baltimore, MD 21201.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on November 18, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 97–30795 Filed 11–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Wetland Involvement; for Construction of a Consolidated Waste Processing Facility at the Miamisburg Environmental Management Project (MEMP)

AGENCY: Department of Energy (DOE), Miamisburg Environmental Management Project.

ACTION: Notice of wetland involvement.

SUMMARY: This is to give notice of DOE's proposal to construct a consolidated waste processing facility at the Miamisburg Environmental Management Project, located approximately ten (10) miles southwest of Dayton, Ohio. The proposed activity would involve a small portion of an isolated, man-made wetland in Montgomery County, Ohio. In accordance with 10 CFR 1022, DOE will prepare a Wetlands Assessment and conduct the proposed action in such a manner to avoid or minimize potential harm to or within the affected wetland area.

DATES: Written comments must be received by the DOE at the following address on or before December 9, 1997.

ADDRESSES: For further information on this proposed action, including a site map and/or a copy of the Wetlands Assessment, contact: Mr. James O. Johnson, SM/PP Hill Performance/ Technical Monitor, U.S. Department of Energy, Miamisburg Environmental Management Project Office, P.O. Box 66, Miamisburg, OH 45343–0066. Phone: (937) 865–5234; Facsimile: (937) 865–4489.

FOR FURTHER FURTHER INFORMATION CONTACT: For further information on general DOE wetland and floodplain environmental review requirements, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. Phone: (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The proposed activity would directly support the ongoing environmental remediation program at the Mound Plant. Construction and operation of the temporary, pre-fabricated consolidated waste processing facility would accomplish volume-reduction, metal recovery and waste packaging goals established for the site. Included in the construction of the facility are equipment and laydown pads and a roadway. Approximately 20% of the 50′ × 60′ laydown pad would encroach upon an isolated, man-made wetland with an overall areal extent of 0.04 acres. Construction of the laydown pad would, in turn, impact approximately one-third (⅓) of the subject wetland; the remaining two-thirds (⅔) of the wetland would not be impacted. The wetland was one of several delineated in the Mound Plant Habitat map (Mound Plant Ecological Characterization Report, March 1994); the map was prepared in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual and has the concurrence of the Corps. The proposed action would result in long-term and direct impacts to approximately one-third of the 0.04 acre man-made wetland, as a result of back-filling with gravel before construction of the laydown pad. Best management practices would be utilized to minimize the amount of wetland area impacted. All reasonable efforts would be taken to backfill the smallest area of wetland possible. Staging and transport of equipment and supplies in the wetland would be avoided. Erosion controls such as silt fences would be used, if needed, to minimize sediment deposition into the wetland. Culverts would also be used, if necessary, to ensure continued overland flow to the wetland.

Issuance: Issued in Miamisburg, Ohio on November 18, 1997.

Susan L. Smiley,

NEPA Compliance Officer, Ohio Field Office.

[FR Doc. 97–30794 Filed 11–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Impact Statement for the High Flux Beam Reactor Transition Project at the Brookhaven National Laboratory, Upton, NY

AGENCY: Department of Energy.

ACTION: Notice of intent (NOI).

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), for the High Flux Beam Reactor (HFBR) at the Brookhaven National Laboratory (BNL) in Upton, New York. The EIS will evaluate the range of reasonable alternatives regarding the future of the reactor, as required by NEPA, including: (1) No action (maintaining HFBR in a shutdown and defueled condition); (2) resume operation at a power level of 30 megawatt (MW) or up to 60 MW; (3) resume operation and enhance the facility; and (4) permanent shutdown with eventual decontamination and decommissioning (D&D). DOE invites individuals, organizations, and agencies to present oral and/or written comments concerning the scope of the EIS, including the environmental issues and alternatives the EIS should analyze.

DATES: The public scoping begins with publication of this NOI in the **Federal Register** and continues until January 23, 1998. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practicable.

DOE will conduct public scoping meetings to assist it in defining the appropriate scope of the EIS, including the significant environmental issues to be addressed. DOE plans to hold scoping meetings in the vicinity of BNL in December 1997 and January 1998. The December meeting will be held at the following date, time and location:

December 10, 1997, Mastic Beach Property Owners Association, 31 Neighborhood Road, Mastic Beach, New York 11951; Time: 4:00 p.m.–9:00 p.m.

Locations of additional scoping meetings to be held in January will be announced through the local media as soon as possible, but at least 15 days prior to the date of the meetings.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS, requests to speak at the public scoping meetings, requests for special arrangements to enable participation at scoping meetings (e.g., interpreter for the hearing-impaired) and questions concerning the project to: Michael Holland, Brookhaven Group, U.S. Department of Energy, 53 Bell Avenue, Bldg. 464, P.O. Box 5000, Upton, NY 11973–5000, (516) 344–3552, telefax (516) 344–1377, or by electronic mail to mholland@bnl.gov.

FOR FURTHER INFORMATION CONTACT: For general information associated with the research aspects of the HFBR, please contact: Iran Thomas, Deputy Associate Director, Office of Basic Energy Sciences, Office of Energy Research, U.S. Department of Energy, ER–10, Germantown, MD 20874, telephone: (301) 903–3427.

For technical information associated with reactor operation, please contact: Robert Lange, Associate Director, Office of Facilities, Office of Nuclear Energy,

U.S. Department of Energy, NE–40, 19907 Germantown Rd., Germantown, MD 20874, telephone: (301) 903–2915.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119, telephone: (202) 586–4600 or leave a message on (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The Brookhaven National Laboratory was established in 1947 as a multi-disciplinary scientific research center. It is located close to the geographic center of Suffolk County, Long Island, about 56 miles (91 kilometers) east of New York City. The Laboratory site consists of 8.2 square miles (21.3 square kilometers, 2,130 hectares) with most principal facilities located near the center. The Laboratory carries out basic and applied research in the following areas: High-energy and nuclear physics; solid state physics; materials sciences and chemical sciences; nuclear medicine; biomedical and environmental sciences; and selected energy technologies.

The HFBR, which is centrally located within the BNL site (about 1 mile from the eastern site boundary and 1.5 miles from the southern boundary), was commissioned in 1965 as a scientific facility dedicated to neutron scattering research and other research programs in solid state physics, nuclear physics, materials technology, structural biology, medicine and chemistry. Neutron scattering techniques are used to study the structure and properties of materials. The HFBR has provided about two-thirds of the Department's experimental capability at reactors for neutron scattering.

The HFBR uses heavy water (deuterium) for cooling and a highly enriched uranium core to produce beams of thermal neutrons that are guided to experimental areas by nine horizontal aluminum alloy tubes called ''beam tubes.'' In addition, there are seven vertical tubes for irradiating research samples in the reactor. The entire reactor and its control room are enclosed within a confinement dome. This reactor does not produce electric power. The HFBR staff presently consists of about 110 scientists, engineers, technicians, and administrative personnel. The HFBR scientific user community numbers about 300 researchers, including several from Japan and Europe.

In some research areas the HFBR is the best facility in the United States. For example, the facility's Small Angle Neutron Scattering (SANS) capability is regarded as a particularly useful technique by structural biologists, who represent a rapidly growing user community for neutron scattering. The HFBR SANS offers unique capabilities for the study of biological samples and is the best resource in the United States for this type of work. In addition, the HFBR's Single Crystal Neutron Diffraction equipment complements x-ray techniques in determining the structure of complex organic molecules because of its ability to locate hydrogen atoms. The HFBR facility has also been used for radioisotope production, neutron activation analysis, and material irradiation.

The reactor was originally designed for operation at a power level of 40 megawatts (MW). An equipment upgrade in 1982 allowed operation at 60 MW, which greatly enhanced the reactor's scientific capability. Beginning in 1991, the operating power of the reactor was limited to 30 MW until additional analysis could be performed to address safety concerns associated with a hypothetical loss of reactor coolant accident while operating at 60 MW. Subsequent analyses, currently under review as part of an on-going Safety Analysis Report revision program, indicate that the HFBR could be safely operated at 60 MW. Scientific users have recommended operating the reactor at 60 MW, and that the Department upgrade and modernize the scientific instrumentation and other features such as the beam tubes.

Current Status of HFBR

On December 21, 1996, the HFBR was shut down for refueling and maintenance, a routine activity which normally occurs almost every month. Before the reactor returned to scheduled scientific operations, however, monitoring indicated that a plume of tritiated water was contaminating the groundwater in excess of drinking water standards south and down gradient of the reactor. DOE, in cooperation with the U.S. Environmental Protection Agency (EPA), New York State Department of Conservation (NYSDEC), and Suffolk County Department of Health Services (SCDHS), immediately initiated activities to identify and eliminate the source of the tritium plume. These activities, now collectively called the Tritium Remediation Project, continue as part of the Department's commitment to remediate the contaminated groundwater.

Data collection and analysis identified the HFBR spent fuel pool as the likely source of the tritium plume. In May 1997, a short-term removal action, in the form of a groundwater extraction system, was undertaken to ensure that tritium contaminated groundwater in excess of drinking water standards does not leave the BNL site boundary.

The short-term removal action has been incorporated into the site's cleanup program in accordance with the Interagency Agreement among DOE, EPA and NYSDEC entered into pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). A description of the removal action taken, alternatives considered, regulatory interaction, and public participation activities associated with the short-term removal action are documented in the Action Memorandum for Operable Unit III Tritium Removal Action, dated May 9, 1997, which is available in the reading rooms identified in this notice.

The final remedial action will be determined through the CERCLA Operable Unit III Remedial Investigation/Feasibility Study (RI/FS) process and will be based on additional data collected, groundwater modeling, and evaluations of various remediation options, including those activities which comprise the Tritium Remediation Project. The CERCLA Record of Decision that completes this process is scheduled to be published in the fall of 1998. The potential environmental impacts associated with this CERCLA action will be reflected and accounted for in the environmental analysis contained in the EIS.

In addition to the activities associated with the cleanup of the contaminated groundwater plume, all fuel has been removed from the reactor and the pool and shipped off-site in preparation for removing all water from the fuel pool. Decontamination and dewatering of the storage pool is underway in order to eliminate the current source of the tritium to the groundwater beneath the HFBR. Operation of the groundwater plume pumping, treatment, and recharge system continues. The groundwater tritium plume has been characterized and modeled, and continues to be sampled and monitored. Removal of the water from the spent fuel pool is scheduled for completion by the end of 1997.

Purpose and Need for the Agency Action

The Department of Energy needs to make a decision regarding the future of the HFBR at BNL. This EIS will aid DOE in its decisionmaking process. In July

1997, the Department issued its ''Action Plan for Improved Management of Brookhaven National Laboratory,'' which summarized the Department's planned process for deciding the future of the HFBR. The Action Plan states that the Secretary of Energy will decide the future of the HFBR and directs an appropriate environmental review process. That review process consists of this EIS on the HFBR, which will incorporate the results of the tritium remediation project being conducted in conjunction with the ongoing CERCLA process. The Secretary is scheduled to decide upon a preferred alternative for the future of the HFBR in early 1998 for inclusion in this EIS. As stated in the Action Plan, that decision will take into account several factors, including: public input from the local Long Island community; input from the HFBR scientific user community and the DOE Basic Energy Sciences Advisory Committee; and the value of the scientific information produced using the HFBR. The alternatives listed in this Notice for evaluation in the EIS reflect the full range of options available for the future of the HFBR. The results of the EIS scoping process will be considered in selecting the preferred alternative. The preferred alternative will be noted in the Draft EIS, but the EIS will analyze all reasonable alternatives, as required by NEPA.

The Conference Report accompanying Pub. L. 105–62, the Energy and Water Development Appropriations Act of 1998, directed that an EIS be prepared on the HFBR. The Report noted the conferees' expectation that the EIS include a ''comprehensive survey of any environmental hazards that the tritium leak or other contamination associated with the HFBR pose to the drinking water and health of the people in the surrounding communities, and that it will provide a detailed plan for remediation.'' The EIS will provide this analysis, while concurrently proceeding with, the Tritium Remediation Project and applicable Interagency Agreement and CERCLA commitments. Long-term remediation plans are being prepared under the ongoing CERCLA program and will be discussed with the local community. Consistent with Congress' direction, the EIS will summarize this remediation plan and program, and assess the HFBR's potential for further contributing to groundwater contamination.

The Report also directed the Department to drain the spent fuel pool, meet the requirements outlined in the Suffolk County Sanitary Code Article 12, complete seismic upgrades, and repair and seal the floor drains. These modifications and repairs, in addition to those indicated in (3) below, are needed to place the HFBR into a radiologically and industrially safe condition, regardless of which alternative is selected for the future of the HFBR, and do not result in any adverse environmental impacts. Accordingly, since these activities do not have an adverse impact and do not limit the choice of reasonable alternatives, DOE intends to proceed with these activities prior to completion of the EIS. These modifications include repairs needed to bring the HFBR into compliance with applicable Federal, State, and local laws and requirements, including the requirements of Suffolk County Sanitary Code Article 12, which is relevant to reducing risks and preventing future leaks from the facility to the groundwater. These four specific modifications and repairs include:

(1) Several floor joints and conduit penetrations in the floor of the HFBR would be repaired and sealed to ensure that there is no leakage path to groundwater from any accidental spill within the reactor confinement building. The potential for spills exists during both reactor operations and deactivation activities, when there would be a need to move large quantities of radioactive liquids into tanks and drums for storage, treatment or disposal.

(2) Several piping systems and sumps in the HFBR would be modified and repaired by replacing single-walled piping and sumps with double-walled components, or installing new components above the floor, thus meeting the requirements of Suffolk County Sanitary Code 12 for protection of groundwater. These systems would be used during operations and during deactivation activities to flush systems and reduce contamination.

(3) The drains from the 350-foot tall stack (handles exhaust gases from HFBR and other nearby facilities) would be repaired, along with the collection piping and sump, to convert them from a single-walled to a double-walled system. This would enhance the confinement integrity of the HFBR by providing a barrier against potential accidental release of radioactive materials to groundwater.

(4) The HFBR control room and operations level crane would be reinforced to protect radiological monitoring and control systems, as well as operations personnel, in the event of a design basis earthquake. The control room and crane are needed to ensure safe reactor operations or deactivation activities.

The Department is also evaluating a proposal to construct and install a stainless steel liner in the spent fuel pool during the preparation of the EIS. The installation of this impervious liner and appurtenant leak detection system would result in the pool containing a double-walled barrier to ensure that the storage pool would not be a source of groundwater contamination in the future. DOE considers the storage pool to be an essential component of the HFBR regardless of whether or not the reactor operates. It would be needed to store spent fuel during operations. During deactivation activities, it would be used to handle various highly radioactive reactor components which must be dismantled or cut apart in preparation for shipment offsite. Much of this work would be conducted within the storage pool. A usable pool may also be necessary for maintenance of the HFBR during an extended period of time in its present shutdown condition. As part of the CERCLA cleanup of Operable Unit III, the Department committed to construct and install the liner prior to any use of the pool. As a result, the spent fuel liner is included at this time as part of all alternatives, except No Action. DOE specifically solicits comments on whether the liner should be installed, along with the other modifications and repairs, prior to completion of this EIS. After hearing public comments on this issue, the Department may decide to include installation of the liner as part of all alternatives, including No Action.

Alternatives To Be Evaluated

While Pub. L. 105–62 prohibited the use of funds made available under that Act or any other act to restart the HFBR, this EIS will analyze the following reasonable alternatives for the future of the HFBR, as required by NEPA:

No Action Alternative

Under this alternative, the reactor would be maintained in the current shutdown and defueled condition for the indefinite future; the four modifications and repairs listed above would be performed. The Department regards this as a non-preferred alternative, because it does not resolve the future of the HFBR.

Resume Operation Alternative

The earliest date that the reactor could be restarted is October 1999, following completion of the NEPA process and all of the modifications and repairs described above (including installation of the spent fuel liner). This alternative includes two subalternatives:

a. Startup and operation of the reactor at a power level of 30 MW (the power level prior to the shutdown).

b. Startup and operation of the reactor at a power level of 30 MW with a planned increase in operation at a level of up to 60 MW.

Resume Operation and Enhance Facility Alternative

Under this alternative, the Department would restart the reactor for operation at a power level of up to 60 MW, and eventually replace the reactor vessel to extend the life of the reactor, and upgrade the reactor (e.g., add scientific instruments) to enhance the reactor's scientific research capabilities and increase the number of potential reactor users. Because of budget limitations, the Department regards this as a non-preferred alternative.

Permanent Shutdown Alternative

Under this alternative, the HFBR would be permanently shut down for eventual decontamination and decommissioning. Additional NEPA review would be necessary in the future for a proposal to decontaminate and decommission the reactor. This alternative would involve terminating the scientific research mission of the HFBR at BNL and placing the reactor in an industrially and radiologically safe condition for an extended period of time until a proposal were made to decontaminate and decommission the reactor. While an analysis of the full and complete decontamination and decommissioning is beyond the scope of this EIS, the potential environmental impacts associated with decontamination and decommissioning will be analyzed to the extent possible.

At this time, the Department of Energy has no preferred alternative. As noted above, the Secretary of Energy will designate a preferred alternative based on the results of the scoping process and other information in early 1998.

Preliminary Environmental Analysis

The following issues have been tentatively identified for analysis in the EIS. This list is neither intended to be all-inclusive nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comment on the scope of the EIS. Additions to or deletions from this list may occur as a result of the public scoping process.

Health and Safety: potential public and occupational consequences from routine operation and credible accident scenarios.

Waste Generation/Pollution Prevention: types of wastes expected to be generated and stored, pollution prevention opportunities, and the potential consequences to public safety and the environment.

Hazardous Materials: handling, storage, and use; waste management both present and future.

Background Radiation: cosmic, rock, soil, water, and air, and the potential addition of radiation.

Water Resources: surface and groundwater hydrology, use, and quality, and the potential for degradation.

Air Quality: meteorological conditions, ambient background, pollutant sources, and potential for degradation.

Earth Resources: physiography, topography, geology, and soil characteristics.

Land Use: plans, policies and controls.

Noise: ambient, sources, and sensitive receptors.

Ecological Resources: wetlands, aquatic, terrestrial, economically/recreationally important species, threatened and endangered species.

Socioeconomic: demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources.

Natural Disasters: floods, hurricanes, tornadoes, and seismic events. Unavoidable Adverse Impacts.

Natural and Depletable Resources: requirements and conservation potential.

Environmental Justice: any potential disproportionately high and adverse impacts to minority and low income populations.

Alternatives other than those presented in this document may warrant examination, and new issues may be identified for evaluation.

Scoping Meetings

The purpose of this NOI is to encourage public involvement in the EIS process and to solicit public comments on the proposed scope and content of the EIS. DOE will hold public scoping meetings in the BNL area to solicit both oral and written comments from interested parties.

DOE will designate a facilitator for the scoping meetings. The facilitator may ask for clarification of statements to ensure that representatives of the DOE fully understand the comments and suggestions. The scoping meetings will not be conducted as evidentiary hearings nor will there be questioning of the commentors. At the opening of each meeting the facilitator will establish the order of speakers and will announce any additional procedures necessary for conducting the meetings. To ensure that all persons wishing to make a presentation are given the opportunity, a five-minute limit may be enforced for each speaker, with the exception of public officials and representatives of groups, who will be allotted ten minutes each. DOE encourages those providing oral comments to also submit them in writing. Comment cards will also be available for those who prefer to submit their comments in written form.

DOE will make transcripts of the scoping meetings and project-related materials available for public review in the following reading rooms:

1. U.S. Department of Energy, Freedom of Information Public Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: (202) 586–3142.

2. Brookhaven National Laboratory Research Library, Bldg. 477A Brookhaven Ave., Upton, NY 11973, Telephone: (516) 344–3483.

3. Longwood Public Library, 800 Middle Country Rd., Middle Island, NY 11953, Telephone: (516) 924–6400.

4. Mastics-Moriches-Shirley Community Library, 301 William Floyd Parkway, Shirley, NY 11967, Telephone: (516) 399–1511.

Other environmental materials available at these locations or through the Suffolk County Interlibrary Loan System include BNL's 1977 Site-wide EIS, Annual Site Environmental Reports, and the CERCLA Administrative record for cleanup activities.

NEPA Process

The EIS for the HFBR will be prepared according to the National Environmental Policy Act of 1969, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and DOE's NEPA Regulations (10 CFR Part 1021).

The draft EIS is scheduled to be published in the summer of 1998. A 45-day comment period on the draft EIS is planned, and public hearings to receive comments will be held approximately three weeks after distribution of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public meetings will be announced in the **Federal Register** and in the local news media when the draft EIS is distributed.

The final EIS, which will incorporate public comments received on the draft EIS, is expected in November 1998. No sooner than 30 days after a notice of availability of the final EIS is published

in the **Federal Register**, DOE will issue its Record of Decision and publish it in the **Federal Register**. The Record of Decision is expected to be issued in December 1998.

Signed in Washington, D.C., this 19th day of November, 1997.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health

[FR Doc. 97–30821 Filed 11–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Intent To Solicit Applications for Financial Assistance Grants

AGENCY: Department of Energy.

ACTION: Notice of intent to solicit applications for financial assistance grants.

SUMMARY: The U.S. Department of Energy is announcing its intent to solicit applications for awards of financial assistance (i.e., grants) for state-of-the-art research that contributes to any of the following eight areas: reactor physics, reactor engineering, nuclear materials, radiological engineering, radioactive waste management, applied radiation science, nuclear safety and risk analysis, and innovative technologies for next generation reactors, space power and propulsion, or radiation sources.

DATES: The anticipated issuance date of Solicitation Number DE-PS07–98ID13604 is December 1, 1997. A copy of the solicitation in its full text may be obtained on the Internet at http://www.inel.gov/doeid/proc-div.html under Current Solicitations. The deadline for receipt of applications will be approximately 52 days after issuance of the solicitation.

ADDRESSES: Applications will be submitted to: Dallas L. Hoffer, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Dallas Hoffer, Contract Specialist at (208) 526–0014 or Brad Bauer, Contracting Officer at (208) 526–0090; U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

SUPPLEMENTARY INFORMATION: The solicitation will be issued pursuant to 10 CFR 600.6(b) Eligibility for awards under this Nuclear Engineering Education Research (NEER) Program will be restricted to colleges and universities with nuclear engineering degree programs. The purpose of the NEER Program is to (1) support basic research in nuclear engineering; (2) assist in developing nuclear engineering students; and (3) contribute to strengthening the academic community's nuclear engineering infrastructure.

The statutory authority for the program is Pub. L. 95–91.

Issued in Idaho Falls November 17, 1997.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 97–30796 Filed 11–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Commericialization Assistance for Awardees in the Small Business Innovation Research (SBIR) Program, Financial Assistance Solicitation No. DE–FC02–98ER12217

AGENCY: DOE, Chicago Operations Office.

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy (DOE) Office of Energy Research (OER) announces its interest in receiving applications to enhance the commercialization of SBIR recipients' technology. The Department may select more than one offeror for award under this solicitation. The selected offeror(s) may provide SBIR Awardees with individualized assistance in preparing business plans and developing presentation materials for raising capital or finding strategic partners to support the commercialization of their SBIR technology.

The Solicitation is available on the DOE Chicago Internet Home Page at http: //www.ch.doe.gov/business/ACQ.htm with proposals due December 15, 1997. Any modifications to the solicitation will continue to be posted on the Internet. Please note that users are not alerted when the solicitation is issued or when modifications are posted. Prospective offeror(s) are therefore advised to check the above Internet address on a daily basis. The Solicitation is available on the CH Acquisition Page (see address below).

DATES AND ADDRESSES: The complete solicitation document is available on the Internet by accessing the DOE Chicago Internet Home Page at http://www.ch.doe.gov/business/ACQ.htm under the heading ''Current Acquisition Activities'' Solicitation No. DE–FC02–98ER12217. Applications are due no later than 5:00 p.m. local time, on December 15, 1997. Awards are anticipated by January, 1998.

SUPPLEMENTARY INFORMATION: Completed applications referencing Solicitation No. DE-FC02–98ER12217 must be submitted to the U. S. Department of Energy, Chicago Operations Office, Attn: Peter R. Waldman, Bldg. 201, Rm. 3F–11, 9800 South Cass Avenue, Argonne, IL 60439–4899. As a result of this solicitation, DOE may award two(2) cooperative agreements. Available funding, irrespective of the number of offerors selected, is $250,000.00 in FY 1998, and follow-on funding of approximately $250,000.00 for FY99 and FY2000.

The solicitation invites applications which are limited to small business organizations. Eligibility to submit a proposal is restricted to small businesses. The SBIR program is a small business set-aside program. A small business award recipient will provide more credibility to SBIR participants. Past experience with previous commercialization assistance projects confirms that small businesses develop stronger and more productive business relationships with another company that has dealt with business problems similar to their own.

FOR FURTHER INFORMATION CONTACT: Peter R. Waldman, Acquisition and Assistance Group, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439; Telephone No. (630) 252–2189, Fax No. (630) 252–5045, or by e-mail at peter.waldman@ch.doe.gov.

Issued in Chicago, Illinois on November 17, 1997.

James R. Bieschke,

Director, Operations Division.

[FR Doc. 97–30786 Filed 11–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–171–011]

ANR Pipeline Company; Notice Of Proposed Changes In FERC Gas Tariff

November 18, 1997.

Take notice that on November 13, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets to be effective November 1, 1997.

ANR states that the purpose of this filing is to comply with the

Commission's October 29, 1997 letter order. That order addressed the incorporation of certain Gas Industry Standard Board business practices into ANR's tariff.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commissions Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30748 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–492–006]

CNG Transmission Corporation; Notice of Compliance Filing

November 18, 1997.

Take notice that on November 10, 1997, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective December 15, 1997:

First Revised Third Revised Sheet No. 1
Sheet No. 36
First Revised Substitute First Revised Sheet No. 114
First Revised First Revised Sheet No. 115
First Revised Substitute First Revised Sheet No. 118
First Revised Original Sheet No. 119
First Revised Substitute First Revised Sheet No. 124
First Revised Original Sheet No. 125
First Revised Original Sheet No. 126
First Revised First Revised Sheet No. 127
Second Revised Sheet No. 129
Second Revised Sheet No. 130
Second Revised Sheet No. 140
Second Revised Sheet No. 160
Sheet No. 181
First Revised First Revised Sheet No. 204
First Revised Second Revised Sheet No. 255
Second Revised Sheet No. 256
Second Revised Sheet No. 272
Second Revised Sheet No. 274
First Revised Original Sheet No. 292
First Revised First Revised Sheet No. 293
First Revised Original Sheet No. 304
First Revised Original Sheet No. 306
Second Revised Sheet No. 307
Second Revised Sheet No. 307A
First Revised First Revised Sheet No. 309
First Revised Sheet No. 310
Second Revised Sheet No. 314
First Revised Second Revised Sheet No. 346
First Revised Substitute Third Revised Sheet No. 350
Second Revised Sheet No. 381
First Revised Sheet No. 381A
Second Revised Sheet No. 382
First Revised Sheet No. 400
First Revised Sheet No. 401
First Revised Sheet No. 402
First Revised Sheet No. 403
First Revised Sheet No. 404
First Revised Sheet No. 405
Sheet No. 406

CNG states that the tendered tariff sheets were filed in compliance with the Commission's Order dated September 11, 1997 in Docket No. CP96–492–000, *et al.* Specifically, CNG states that the purpose of this filing is to comply with the Commission's directives to remove Rate Schedule OSS from CNG's tariff, and to clarify the availability provisions of CNG's remaining storage service rate schedules.

CNG proposes to: (1) revise the availability section of its existing Rate Schedule GSS to designate Rate Schedule GSS as CNG's open-access storage service pursuant to order No. 636 and Part 284 of the Commission's Regulations; (2) revise Rate Schedule GSS–II to clarify the scope of its availability; and (3) remove Rate Schedule OSS from CNG's tariff. CNG states that it will continue to provide Part 284 storage service under Rate Schedule GSS, and proposes to conduct storage services that have been authorized under Part 157 case-specific authorization pursuant to an individual X-rate schedule for each such service. CNG states that additional X-rate schedules will be filed in Volume No. 2A of CNG's FERC Gas Tariff, once the Commission approves CNG's proposed compliance filing.

CNG states that copies of this filing are being served on the parties to the proceeding in Docket No. CP96–492–004.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with the Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of CNG's filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30740 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM98–2–22–000 and RP97–212–002]

CNG Transmission Corporation; Notice of Compliance Tariff Filing

November 18, 1997.

Take notice that on November 13, 1997, CNG Transmission Corporation (CNG), tendered for filing additional information regarding four aspects of its November 1 Annual TCRA filing, as directed by Letter Order of the Commission issued on October 29, 1997.

CNG states that copies of its filing have been mailed to the parties to the captioned proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30756 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–366–006 and FA94–15–002]

Florida Gas Transmission Company; Notice of Compliance Filing

November 18, 1997.

Take notice that on November 12, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendices A and B to the filing.

FGT states that on August 5, 1997, FGT filed a Stipulation and Agreement of Settlement (Settlement) in Docket Nos. RP96–366, et al. resolving all issues in its rate proceeding, including consolidated matters. Pursuant to Article XIII, the Settlement shall become effective upon the first day of the first month following the issuance of a final Commission order. On September 24, 1997, the Commission issued an order approving the Settlement (September 24 Order). Because no party requested rehearing as of October 24, 1997, the Settlement became effective November 1, 1997.

FGT states that the instant filing is made in compliance with the September 24 Order which directs FGT to file revised tariff sheets to reflect the settlement rates within thirty days of the effectiveness of the Settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30747 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–531–001]

Florida Gas Transmission Company; Notice of Compliance Filing

November 18, 1997.

Take notice that on November 12, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fourth Revised Sheet No. 131 and Substitute Sixth Revised Sheet No. 132, with an effective date of November 1, 1997.

FGT states that On September 19, 1997, FGT filed tariff sheets (September 19 Filing) to modify the cash-out provisions in Section 14B of its tariff by (1) changing the method of determining the Posted Price be used for cashing out imbalances and (2) modifying the imbalance level factors for imbalance levels of 0% to 5%. Several parties protested FGT's filing. Subsequently, on October 10, 1997, FGT filed an answer in which FGT addressed various issues raised by the parties filing protests, but offered to withdraw the proposed changes to the imbalance factors if the Commission would approve the proposed changes to the determination of the Posted Price.

FGT's states that its offer to withdraw the proposed changes to the imbalance factors was made without prejudice to FGT refiling such proposals. On October 29, 1997, the Commission issued an order (October 29 Order) accepting FGT's revisions to the Posted Price determination and accepting FGT's offer to withdraw the proposed revisions to the imbalance level factors. The October 29 Order directed FGT to file revised tariff sheets eliminating the proposed revisions to the imbalance factors. FGT states that the instant filing is in compliance with the October 29 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Section 395.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30749 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–261–000]

Florida Power Corporation; Notice of Filing

November 18, 1997.

Take notice that on October 23, 1997, Florida Power Corporation (FPC), tendered for filing three separate service agreement between FPC and US Gen Power Services, L.P., Illinois Power Company and NP Energy, Inc., for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume Number 8. This tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement was US Gen Power Services, L.P., is proposed to be effective October 8, 1997, the service agreement with Illinois Power Company is proposed to be effective October 14, 1997, and the service agreement was NP Energy, Inc., is proposed to be effective October 17, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30744 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–76–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

November 18, 1997.

Take notice that on November 10, 1997, Koch Gateway Pipeline Company, (Koch Gateway) P.O. Box 1478, Houston, Texas 77251–1478, filed in the above docket a request pursuant to Sections 157.205 and 157.211(a)(2) of the Commission's Regulations, under its blanket certificate issued in Docket No. CP82–430–000 for authorization to operate as a jurisdictional facility in interstate commerce a dual 3-inch meter tube previously installed, operated and placed in service under Section 311(a) of the Natural Gas Policy Act (NGPA) and Section 284.3(c) of the Commission's regulations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway states that the proposed certification of facilities will enable Koch Gateway to provide transportation services under its blanket transportation certificate through a tap serving Entex, Inc. (Entex), a local distribution company in Montgomery County, Texas. Koch Gateway further states that it will operate the proposed facilities in compliance with 18 CFR, Part 157, Subpart F, and that the proposed facilities will not affect its ability to service its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30741 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–46–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1997.

Take notice that on November 12, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume 1, the following tariff sheets, to become effective December 12, 1997:

Eleventh Revised Sheet No. 1
Seventh Revised Sheet No. 2
Original Sheet No. 205
Original Sheet No. 206
Original Sheet No. 207
Original Sheet No. 208
Original Sheet No. 209
Fifth Revised Sheet No. 1807
Fifth Revised Sheet No. 1808
Fifth Revised Sheet No. 1809
Fifth Revised Sheet No. 1810
Third Revised Sheet No. 1811
Second Revised Sheet No. 1812
Fourth Revised Sheet 1813
Second Revised Sheet No. 1814
Third Revised Sheet No. 4200
Fourth Revised Sheet No. 4201
Second Revised Sheet No. 4202

Koch states that it is submitting the above listed tariff sheets to implement a new Daily No Fuel Interruptible Transportation Service on its system. This new service will allow customers on a daily basis to transport gas from specifically identified receipt points to specifically identified delivery points without having to pay a fuel charge.

Any person desiring to be heard to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30752 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–54–001]

Louisiana-Nevada Transit Company; Notice of Tariff Filing

November 18, 1997.

Take notice that on November 13, 1997, Louisiana-Nevada Transit Company (LNT), tendered for filing as part of its Third Revised FERC Gas Tariff, Volume No. 1, the tariff sheet listed below, to be effective October 1, 1997:

Third Revised Sheet No. 56

Pursuant to Order No. 472, the Commission has authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1997 ACA unit surcharge approved by the Commission is $.0022 per Dth.

Pursuant to Section 154.207 of the Commission's Regulations, LNT requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1997.

LNT states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30755 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–77–000]

Northern Border Pipeline Company; Notice of Application

November 18, 1997.

Take notice that on November 12, 1997, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP98–77–000 an abbreviated application pursuant to Section 7(c) of the Natural Gas Act and Sections 157.14 and 157.16 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the acquisition and operation of certain meter facilities in Minnesota.

Specifically, Northern Border seeks to acquire the Windom measurement station from Northwest Gas of Cottonwood County, LLC (Northwest Gas). The Windom measurement station, which is located in Section 17, Township 105N, Range 35W, Cottonwood County, Minnesota, comprises the following facilities:

(1) one 4-inch turbine meter and associated piping;

(2) one 2-inch rotary meter and associated piping;

(3) approximately 110 feet of 4-inch pipe;

(4) remote terminal unit; and

(5) meter and control buildings, and appurtenances.

Northern Border states that Northwest Gas no longer desires to operate the measurement station and will transfer it to Northern Border for a nominal fee. Northwest Gas will pay Northern Border $46,633 for the negative cashflow that Northern Border states it will experience as a result of the timing of income tax liability incurred in acquiring the Windom measurement station.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before December 9, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30742 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–45–007]

Northern Border Pipeline Company; Notice of Billing Adjustment and Refund Report

November 18, 1997.

Take notice that on November 6, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing its billing adjustment and refund report in accordance with the Commission's August 1, 1997 order in Docket No. RP96–45–004 (80 FERC ¶ 61,150) approving the Stipulation and Agreement with modification dated October 15, 1996 (October 15 Settlement).

Northern Border states that on October 9, 1997, it distributed billing adjustment and refund checks to each affected shipper, or its designated agent. The total amount of the billing adjustment and refunds including applicable carrying charges was $52,629,752.46. Northern Border states that the billing adjustment and refunds with applicable carrying charges were calculated in accordance with the terms of the October 15 Settlement.

Northern Border states that a complete copy of this report has been served on all affected shippers and interested state commissions and is also available for review at Northern Border's office in Omaha, Nebraska.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such protests must be made as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30746 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–48–000]

Northwest Alaskan Pipeline Company; Notice of Tariff Changes

November 18, 1997.

Take notice that on November 14, 1997, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing in Docket No. RP98–48–000 as part of its FERC Gas Tariff, Original Volume No. 2, Forty-First Revised Sheet No. 5, with an effective date of January 1, 1998.

Northwest Alaskan states that it is submitting Forty-First Revised Sheet No. 5 reflecting an increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (Pan-Alberta) and resold to Pan-Alberta Gas (U.S.), Inc. (PAG–US) under Rate Schedules X–1, X–2 and X–3, and to Pacific Interstate Transmission Company (PIT) under Rate Schedule X–4.

Northwest Alaskan states that it is submitting Forty-First Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and PAG–US and PIT, and pursuant to Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1998 through June 30, 1998) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30754 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–90–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

November 18, 1997.

Take notice that on November 13, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP98–90–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate the Animas Air Park Meter Station located in La Plata County, Colorado as a certificated delivery point under Section 7(c) of the Natural Gas Act for the delivery of gas to Greeley Gas Company (Greeley) for any eligible shipper, under Northwest's blanket certificate issued in Docket No. CP82–443–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that the Animas Air Park Meter Station, located at milepost 6.34 on Northwest's Ignacio to Sumas mainline, was originally constructed pursuant to Section 311 of the Natural Gas Policy Act to be used for the delivery of gas to Greeley pursuant to Subpart B of Part 284 of the Commission's Regulations.

Northwest states that the Greeley has requested Northwest to operate the Animas Air Park Meter Station as a certificated delivery point for the delivery of gas to Greeley for any eligible shipper under Northwest's blanket transportation certificate.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 384.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30743 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–40–000]

Panhandle Eastern Pipe Line Company; Notice of Statement of Refunds Due

November 18, 1997.

Take notice that on November 10, 1997, Panhandle Eastern Pipe Line Company (Panhandle) pursuant to the Commission's Order dated September 10, 1997, in Public Service Company of Colorado, *et al.*, Docket Nos. RP97–369–000, *et al.*, tendered for filing its Statement of Refunds Due with respect to refunds of Kansas Ad Valorem Taxes.

Panhandle states that copies of its filing is being sent to the Kansas Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30751 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–47–000]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1997.

Take notice that on November 13, 1997, Shell Gas Pipeline company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet Nos. 14, 20, 259 and 260, to become effective December 12, 1997.

SGPC states that the purpose of this filing is to meet the expressed needs of potential shippers. Therefore SGPC proposes to reduce the minimum requirements under Rate Schedule FT–2 to a reserve commitment level of 10 BCF and a MDQ of 1,000 Mcf per day.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30753 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–3–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

November 18, 1997.

Take notice that on November 13, 1997, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective November 1, 1997:

Substitute Second Revised Sheet No. 32
Substitute Fifth Revised Sheet No. 62
Substitute Second Revised Sheet No. 91
Substitute Fifth Revised Sheet No. 92
Substitute First Revised Sheet No. 244
Substitute Third Revised Sheet No. 245
Substitute Third Revised Sheet No. 246
Substitute Second Revised Sheet No. 247
Substitute Fourth Revised Sheet No. 248B
Substitute Second Revised Sheet No. 248D
Substitute Fourth Revised Sheet No. 249
Substitute Fourth Revised Sheet No. 252

Williston Basin states that the revised tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's ''Order Rejecting Tariff Sheets and Accepting Tariff Sheets Subject to Conditions'' issued October 30, 1997 in the above referenced docket as more fully detailed in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30750 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–7–000, et al.]

Enfield Operations, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 17, 1997.

Take notice that the following filings have been made with the Commission:

1. Enfield Operations, L.L.C.

[Docket No. EG98–7–000]

Take notice that on November 10, 1997, Enfield Operations, L.L.C., a limited liability company incorporated and existing under the laws of the State of Delaware, having its registered office at Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, State of Delaware (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it will be engaged directly in operating an eligible facility located near the Plant. The Plant will consist of a 396 MW combined cycle power plant, fueled by natural gas and located in the Borough of Enfield, North London, England.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Wisconsin Public Service Corporation v. Wisconsin Power & Light Company and Wisconsin Public Power Incorporated SYSTEM

[Docket No. EL98–7–000]

Take notice that on November 6, 1997, Wisconsin Public Service Corporation tendered for filing a complaint against Wisconsin Power & Light Company and Wisconsin Public Power Incorporated SYSTEM alleging that Wisconsin Power and Light Company refuses to file the bypass amendment in violation of the Federal Power Act and that Wisconsin Public Power Incorporated SYSTEM is guilty of hoarding scarce transmission capacity.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before December 17, 1997.

3. Maine Electric Power Company

[Docket No. ER97–4517–000]

Take notice that on November 6, 1997, Maine Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Union Electric Company

[Docket No. ER98–285–000]

Take notice that on October 27, 1997, Union Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 155.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER98–366–000]

Take notice that on October 29, 1997, New England Power Company filed a Service Agreement and Certificates of Concurrence with Wheeled Electric Power Company, under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER98–367–000]

Take notice that on October 29, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing a summary of short-term transactions made during the third quarter of calendar year 1997, under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER98–368–000]

Take notice that on October 29, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company) filed one (1) umbrella service agreement for short-term firm point-to-point transmission service between SCS, as agent for Southern Company, and Williams Energy Services Company, under Part II of the Open Access Transmission Tariff (Tariff) of Southern Company. Southern Company also filed three (3) umbrella non-firm point-to-point transmission service agreements under the Tariff between SCS, as agent for Southern Company, and (i) Oglethorpe Power Corporation, (ii) Williams Energy Services Company, and (iii) NP Energy, Inc.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER98–369–000]

Take notice that on October 29, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with DPL Energy, Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the DPL Energy, Inc.

NUSCO requests that the Service Agreement become effective October 23, 1997.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Public Service Company

[Docket No. ER98–371–000]

Take notice that on October 29, 1997, Central Illinois Public Service Company (CIPS), submitted an executed non-firm point-to-point service agreement, dated October 17, 1997, establishing Entergy Power Marketing Corp., as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of October 17, 1997, for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on Entergy Power Marketing Corp., and the Illinois Commerce Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Lowell Cogeneration Company Limited Partnership

[Docket No. ER98–372–000]

Take notice that on October 29, 1997, Lowell Cogeneration Company Limited Partnership (Lowell), tendered for filing a service agreement between the New England Power Pool and Lowell for service under Lowell's FERC Electric Tariff, Original Volume No. 1 (Tariff). This Tariff was accepted for filing by the Commission on July 17, 1997, in Docket No. ER97–2414–000.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Yadkin, Inc.

[Docket No. ER98–373–000]

Take notice that on October 29, 1997, Yadkin, Inc., tendered for filing a summary of activity for the quarter ending September 30, 1997.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket No. ER98–374–000]

Take notice that on October 29, 1997, Florida Power Corporation (Florida Power), filed a Cost-Based Wholesale Power Sales Tariff (CR–1) (Tariff) to permit Florida Power to engage in transactions for capacity and energy at negotiated rates, subject to a cost-based cap. Florida Power requests that the Tariff be made effective as of the date it was filed.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER98–375–000]

Take notice that on October 30, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and CMS Marketing, Services and Trading under Rate GSS.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER98–376–000]

Take notice that on October 30, 1997, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Constellation Power Source, Inc., (Constellation). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Constellation's signature page would permit NEPOOL to expand its membership to include Constellation. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Constellation a member in NEPOOL. NEPOOL requests an effective date of November 1, 1997, for commencement of participation in NEPOOL by Constellation.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER98–377–000]

Take notice that on October 30, 1997, PECO Energy Company (PECO), filed the following documents as part of its amendment to the Code of Conduct adopted by PECO in connection with the Commission's grant of market-based rates authorization to PECO in FERC Docket Nos. ER96–640–000, ER96–641–000 and ER97–316–000:

1. Letter of Transmittal.
2. Clean and redlined copies of the amended Code of Conduct.

Copies of the filing are being sent to the Pennsylvania Public Utility Commission and all customers with executed agreements under PECO's FERC Electric Service Tariff—Volume I.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER98–378–000]

Take notice that on October 30, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated October 28, 1997, with New Energy Ventures, L.L.C., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds New Energy Ventures, L.L.C., as a customer under the Tariff. DLC requests an effective date of October 28, 1997, for the Service Agreement.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Duquesne Light Company

[Docket No. ER98–379–000]

Take notice that on October 30, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated October 28, 1997, with New Energy Ventures, L.L.C., under DLC's Open Access Transmission Tariff. The Service Agreement adds New Energy Ventures, L.L.C., as a customer under the Tariff. DLC requests an effective date of October 28, 1997, for the Service Agreement.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Long Island Lighting Company

[Docket No. ER98–381–000]

Take notice that on October 30, 1997, Long Island Lighting Company (LILCO), filed Electric Power Service Agreements entered into as of the following dates by LILCO and the following parties:

Purchaser	Service agreement date
Niagara Mohawk Power Corporation.	July 3, 1996.
Incorporated Village of Freeport.	April 23, 1997.

The Electric Power Service Agreements listed above were entered into under LILCO's Power Sales Umbrella Tariff.

LILCO requests that the Commission accept the Electric Power Service Agreement between LILCO and Niagara Mohawk Power Corporation with an effective date of October 16, 1996, and the Electric Power Service Agreement between LILCO and the Incorporated Village of Freeport with an effective date of May 31, 1997. LILCO has served copies of this filing on the customers which are a party to each of the Electric Power Service Agreements and on the New York State Public Service Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER98–382–000]

Take notice that on October 30, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and MC^2 Inc., (hereinafter Supplier). The terms and conditions contained within this agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

[Docket No. ER98–383–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Delmarva Power & Light d/b/a Connectiv Energy (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Northern/AES Energy LLC

[Docket No. ER98–445–000]

Take notice that on October 31, 1997, Northern/AES Energy LLC (Northern/AES), petitioned the Commission for acceptance of Northern/AES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Northern/AES intends to engage in wholesale electric power and energy purchases and sales as a marketer. Northern/AES is not in the business of generating or transmitting electric power. AES Power, Inc. (AES Power), United Power Association (UPA), and J Power, Inc. (J Power), own member interests in Northern/AES. AES Power is a marketer of wholesale electric power and energy. The AES Corporation, the parent of AES Power, is a developer and owner of independent power projects. UPA is a generation and transmission cooperative that is regulated by the Rural Utility Service. J Power is a marketer of wholesale electric power and energy.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. COM/Energy Marketing, Inc.

[Docket No. ER98–449–000]

Take notice that on October 31, 1997, COM/Energy Marketing, Inc. (CE), tendered for filing pursuant to Rules 205 and 207, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective December 30, 1997.

CE intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where CE sells electric energy it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Bangor Energy Resale, Inc.

[Docket No. ER98–459–000]

Take notice that Bangor Energy Resale, Inc. (Bangor Energy), a wholly-owned subsidiary of Bangor Hydro-Electric Company, submitted for filing on October 31, 1997, pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Electric Rate Schedule FERC No. 1, a market-based rate schedule.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Bangor Hydro-Electric Company

[Docket No. ER98–463–000]

Take notice that on October 31, 1997, Bangor Hydro Electric Company (Bangor Hydro) tendered for filing a rate schedule providing for the sale of energy and capacity to Bangor Energy Resale, Inc., a wholly-owned subsidiary of Bangor Hydro.

Copies of this filing were served on the affected state public utility commissions and UNITIL Power Corporation.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

[Docket No. ER98–466–000]

Take notice that on October 31, 1997, New England Power Company (NEP), submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, an Amendment to Service Agreement that would terminate the obligation of the Water and Light Department of the Town of Littleton, New Hampshire (Littleton) to purchase from NEP, and the obligation of NEP to supply Littleton, requirements service pursuant to NEP's FERC Tariff, Original Volume No. 1, and would obligate Littleton to compensate NEP by the payment of Contract Termination Charges. NEP also filed a Service Agreement for the provision to Littleton of Network Integration Transmission Service and a Network Operating Agreement under NEP's open access transmission tariff. Copies of the filing have been served on the customer, the New Hampshire Public Utilities Commission and other Tariff 1 customers.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Puget Sound Energy, Inc.

[Docket No. ER98–486–000]

Take notice that on October 31, 1997, Puget Sound Energy, Inc., tendered for filing a Service Agreement for Network Integration Transmission Service pursuant to which Puget Sound Energy will implement a retail electric direct access pilot program. The pilot program was approved by the Washington Utilities and Transportation Commission to allow retail electricity sales by alternate suppliers in designated portions of Puget Sound Energy's service territory for a period of limited duration. A copy of the filing was served on the Washington Utilities and Transportation Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Orange and Rockland Utilities, Inc.

[Docket No. ER98–487–000]

Take notice that on October 30, 1997, Orange and Rockland Utilities, Inc. (O&R), tendered for filing an amendment to its agreement with the New York Power Authority (NYPA) dated June 28, 1985. O&R has served a copy of this filing on the New York State Public Service Commission and NYPA.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Oklahoma Gas and Electric Company

[Docket No. ER98–511–000]

Take notice that on November 3, 1997, Oklahoma Gas and Electric Company (OG&E), tendered for filing an initial rate schedule (Power Sales Tariff) providing for sales of capacity and/or energy at market-based rates and for the resale of transmission rights that OG&E has reserved for its own use on its own transmission system or on the transmission systems of other transmission providers.

Copies of this filing have been sent to the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Boston Edison Company

[Docket No. ER98–522–000]

Take notice that on November 3, 1997, Boston Edison Company of Boston, Massachusetts, tendered for filing a (1) tariff providing for sales of electric capacity and/or energy at market-based rates and for the resale of transmission rights, (2) Standards of conduct as to inter-affiliate transactions, and (3) a form of service agreement and service specifications. Boston Edison asks that its tariff and related documents be allowed to become effective January 2, 1998.

Boston Edison states that it has served a copy of the instant filing upon the Massachusetts Department of Public Utilities and the Massachusetts Attorney General.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Wolverine Power Supply Cooperative Inc.

[Docket No. ER98–539–000]

Take notice that Wolverine Power Supply Cooperative, Inc. (Wolverine), on October 30, 1997, tendered for filing an Open Access Transmission Tariff in compliance with Order No. 888, Order No. 888–A.

Copies of the filing were served on Wolverine's six wholesale power customers, two existing unbundled transmission customers, and the Michigan Public Service Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30824 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–390–000, et al.]

Oklahoma Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 18, 1997.

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Company

[Docket No. ER98–390–000]

Take notice that on October 30, 1997, Oklahoma Gas and Electric Company (OG&E), tendered for filing service agreements for parties to take service under its open access tariff.

Copies of this filing have been served on the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Fitchburg Gas and Electric Light Company

[Docket No. ER98–391–000]

Take notice that on October 30, 1997, Fitchburg Gas and Electric Light Company tendered for filing a summary of activity for the quarter ending September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–392–000]

Take notice that on October 30, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with The Energy Authority, Inc., ConAgra Energy Services, Inc., and New Energy Ventures under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Washington Water Power Company

[Docket No. ER98–393–000]

Take notice that on October 30, 1997, The Washington Water Power Company (WWP), filed with the Federal Energy Regulatory Commission two Service Agreements for Network Integration Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 for service to participants in WWP's Direct Access Delivery Service program in the state of Washington and the state of Idaho. WWP requests effective dates of September 1, 1996 and October 1, 1996.

Copies of this filing were provided to the Idaho Public Utilities Commission and the Washington Utilities and Transportation Commission.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Lowell Cogeneration Company Limited Partnership

[Docket No. ER98–394–000]

Take notice that on October 30, 1997, Lowell Cogeneration Company Limited Partnership, tendered for filing a summary of activity for the quarter ending September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Corporation

[Docket No. ER98–395–000]

Take notice that on October 30, 1997, New York State Electric & Gas Corporation filed the Summary of Quarterly Activity for the calendar year quarter ending September 30, 1997, pursuant to § 205 of the Federal Power Act, 16 USC 824d (1985), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR Part 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997, order (the Order) in Docket No. ER97–2518–000.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER98–396–000]

Take notice that on October 30, 1997, Wisconsin Public Service Corporation, tendered for filing executed service agreement with Marshfield Electric & Water Dept., Central Minnesota Municipal Power Agency, and Blue Earth Light & Water under its CS–1 Coordination Sales Tariff.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. The Cleveland Electric Illuminating Company

[Docket No. ER98–397–000]

Take notice that on October 30, 1997, The Cleveland Electric Illuminating Company, tendered for filing its quarterly report of transactions for the period July 1, 1997 through September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER98–398–000]

Take notice that on October 30, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a summary of short-term transactions made during the third quarter of calendar year 1997 under Virginia Power's market rate sales tariff, FERC Electric Power Sales Tariff, Original Volume No. 4, filed by Virginia Power in Docket No. ER97–3561–000.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Dayton Power and Light Company

[Docket No. ER98–399–000]

Take notice that on October 30, 1997, The Dayton Power and Light Company (Dayton), tendered for filing a summary of first quarter market based sales.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–400–000]

Take notice that on October 30, 1997, Consolidated Edison Company of New York, Inc., tendered for filing a summary of the electric exchanges, electric capacity, and electric other energy trading activities under its FERC Electric Tariff Rate Schedule No. 2, for the quarter ending September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric & Gas Company

[Docket No. ER98–401–000]

Take notice that on October 30, 1997, Public Service Electric & Gas Company, tendered for filing Transaction Summary of its activity for the third quarter of 1997, under its Market Based Rate Tariff, Original Volume No. 6.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. The Toledo Edison Company

[Docket No. ER98–402–000]

Take notice that on October 30, 1997, The Toledo Edison Company, tendered for filing its quarterly report of transactions for the period July 1, 1997 through September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Washington Water Power

[Docket No. ER98–403–000]

Take notice that on October 30, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, ConAgra Energy Services, Inc. WWP requests waiver of the prior notice requirement and requests an effective date of October 23, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Washington Water Power

[Docket No. ER98–404–000]

Take notice that on October 30, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, Engelhard Power Marketing, Inc. WWP requests waiver of the prior notice requirement and requests an effective date of October 1, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–405–000]

Take notice that on October 30, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU Service, Inc., and American Energy Solutions, Inc. (AME), dated October 29, 1997. This Service Agreement specifies that AME has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and AME to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 29, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Kentucky Utilities Company

[Docket No. ER98–406–000]

Take notice that on October 30, 1997, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during July 1, 1997, through September 30, 1997, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Washington Water Power

[Docket No. ER98–407–000]

Take notice that on October 30, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreements and associated Certificates of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, with Benton County PUD, Delhi Energy Services, Inc., and Questar Energy Trading Company that were previously submitted by cover letter dated February 26, 1997, with a notice of filing. WWP requests waiver of the prior notice requirement and requests an effective date of February 1, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho Power Company

[Docket No. ER98–408–000]

Take notice that on October 30, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement for Regulation and Frequency Response Service under Idaho Power's Open Access Transmission Tariff, Original Volume No. 5, between Idaho Power Company and Montana Power Company.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Washington Water Power

[Docket No. ER98–409–000]

Take notice that on October 30, 1997, Washington Water Power (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed a Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, with PG&E Energy Services, Energy Trading Corporation (PG&E), formerly doing business as Vantus Power Services (Vantus). WWP previously filed an unsigned Vantus Service Agreement dated December 15, 1996 with the Commission, noticed under Docket No. ER97–1252–000. The PG&E Service Agreement, dated October 22, 1997, therefore replaces the unsigned Vantus Service Agreement.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Potomac Electric Power Company

[Docket No. ER98–410–000]

Take notice that on October 30, 1997, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco, Northeast Utilities Service Company, and Sonat Power Marketing L.P., with an effective date of October 30, 1997, for these service agreements, and requesting waiver of notice.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Company Services, Inc.

[Docket No. ER98–412–000]

Take notice that on October 30, 1997, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies), submitted a report of short-term transactions that occurred under the Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) during the period July 1, 1997, through September 20, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Tucson Electric Power Company

[Docket No. ER98–414–000]

Take notice that on October 30, 1997, Tucson Electric Power Company (TEP), tendered for filing the following service agreements for firm and non-firm point-to-point transmission service, and the following umbrella agreements for short-term firm transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under the agreements, and to permit the umbrella agreements to become effective as of the date of this filing. The details of the service agreement are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Salt River Project dated September 11, 1997. Service under this agreement commenced on September 11, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Electric Clearinghouse, Inc., dated October 23, 1997. Service under this agreement commenced on October 1, 1997.

3. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated October 24, 1997. Service under this agreement commenced on September 13, 1997.

4. Service Agreement for Firm Point-to-Point Transmission Service with Tucson Electric Power Co., Contracts & Wholesale Marketing dated October 24, 1997. Service under this agreement commenced on October 1, 1997.

5. Service Agreement for Non-Firm Point-to-Point Transmission Service with NP Energy, Inc., dated September 22, 1997. As of the date of this filing, service under this agreement has not yet commenced.

The details of the umbrella agreements are as follows:

1. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service with Tucson Electric Power Company, Contracts and Wholesale Marketing dated October 21, 1997.

2. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service with Enron Power Marketing dated October 23, 1997.

3. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service with PacifiCorp dated October 23, 1997.

4. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service with Electric Clearinghouse, Inc. dated October 23, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Duquesne Light Company

[Docket No. ER98–416–000]

Take notice that on October 31, 1997, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 28, 1997, with Woodruff Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Woodruff Energy as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Duquesne Light Company

[Docket No. ER98–417–000]

Take notice that on October 31, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated October 16, 1997, with QST Energy Trading, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds QST Energy Trading, Inc., as a customer under the Tariff. DLC requests an effective date of October 16, 1997, for the Service Agreement.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Duquesne Light Company

[Docket No. ER98–418–000]

Take notice that on October 31, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated October 29, 1997, with QST Energy Trading, Inc., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds QST Energy Trading, Inc., as a customer under the Tariff. DLC requests an effective date of October 29, 1997, for the Service Agreement.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Arizona Public Service Company

[Docket No. ER98–419–000]

Take notice that on October 31, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements with the following entities under APS' Market Rate Tariff No. 1, FERC Electric Tariff, Original Volume No. 3: Los Angeles Department of Water & Power, Nevada Power Company, San Diego Gas & Electric, Arizona Electric Power Cooperative, Salt River Project Agricultural Improvement & Power District, Southern California Edison

A copy of this filing has been served on the Arizona Corporation Commission and all entities on the Service List.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Powerex

[Docket No. ER98–420–000]

Take notice that on October 31, 1997, Powerex, tendered for filing of its summary of activities for the quarter ending September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Services Inc.

[Docket No. ER98–421–000]

Take notice that on October 31, 1997, Cinergy Services, Inc. (Services), petitioned the Commission for acceptance of Rate Schedule Nos. 1–5; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. Rate Schedule Nos. 1–5 offer service on behalf of five yet-to-be-formed wholly-owned special purpose subsidiaries of Cinergy Corp., Services' parent corporation.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Cinergy Services, Inc.

[Docket No. ER98–422–000]

Take notice that on October 31, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated October 1, 1997, between Cinergy, CG&E, PSI and ProLiance Energy, LLC (ProLiance).

The Interchange Agreement provides for the following service between Cinergy and ProLiance:

1. Exhibit A—Power Sales by ProLiance
2. Exhibit B—Power Sales by Cinergy

Cinergy and ProLiance have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on ProLiance Energy, LLC, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. PacifiCorp

[Docket No. ER98–423–000]

Take notice that on October 31, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, revisions to Exhibit A to Service Agreement No. 65, of PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to PacifiCorp's Merchant Function, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Illinois Power Company

[Docket No. ER98–424–000]

Take notice that on October 31, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Avista Energy, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Southern California Edison Company

[Docket No. ER98–425–000]

Take notice that on October 31, 1997, Southern California Edison Company (Edison), tenders that effective on the

later of the 1st day of January 1998, or the date the ISO assumes operational control of Edison's transmission grid, FERC Rate Schedule Nos. 74, 102, 117, 118, 120, 129, 130, 140, 141, 143, 147, 151, 153, 158, 159, 160, 161, 162, 166, 181, 185, 188, 240, 259, 346, and 347, and all Supplements thereto, and filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon the following:

Arizona Electric Power Cooperative
Arizona Public Service Company
California Department of Water Resources
City of Anaheim
City of Azusa
City of Banning
City of Burbank
City of Colton
City of Glendale
City of Los Angeles Department of Water and Power
City of Pasadena
City of Riverside
Coastal Electric Services Company
Imperial Irrigation District
M–S–R Public Power Agency
Northern California Power Agency
Pacific Gas & Electric Company
Rainbow Energy Marketing Corporation
San Diego Gas & Electric Company
Western Area Power Administration
Public Utilities Commission of the State of California

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–426–000]

Take notice that on October 31, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with Penn Power Energy, Energis Resources, Inc., PP&L, Inc., and Horizon Energy Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to § 205 of the Federal Power Act.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Southwestern Public Service Company

[Docket No. ER98–427–000]

Take notice that on October 31, 1997, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted a Quarterly Report under Southwestern's market-based sales tariff. The report is for the period of July 1, 1997 through September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Union Electric Company

[Docket No. ER98–428–000]

Take notice that on October 31, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and CNG Power Services Corporation, The Cinergy Operating Companies and Rainbow Energy Marketing Corp. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. New Century Services, Inc.

[Docket No. ER98–429–000]

Take notice that on October 31, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Williams Energy Services Company.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Union Electric Company

[Docket No. ER98–430–000]

Take notice that on October 31, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and Electric Clearinghouse, Inc., and Florida Power Corporation. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Union Electric Company

[Docket No. ER98–431–000]

Take notice that on October 31, 1997, Union Electric Company (UE), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between UE and Electric Clearinghouse, Inc. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to ECI pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Virginia Electric and Power Company

[Docket No. ER98–432–000]

Take notice that on October 31, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and UGI Power Supply, Inc., under the FERC Electric Tariff (Original Volume No. 4), which was accepted by order of the Commission dated September 11, 1997 in Docket No. ER97–3561–000 (80 FERC ¶ 61, 275 (1997)). Under the tendered Service Agreement, Virginia Power agrees to provide services to UGI Power Supply, Inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of October 9, 1997, for the Service Agreement.

Copies of the filing were served upon UGI Power Supply, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30823 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

November 17, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Filing: Interim Steelhead Protection Plan.

b. Project Nos: 2145–032, 943–064.

c. Date Filed: October 9, 1997.

d. Licensee: Public Utility District No. 1 of Chelan County.

e. Name of Projects: Rocky Reach and Rock Island Hydroelectric Projects.

f. Location: The projects are located on the Columbia River in Chelan County, Washington.

g. Licensee Contact: Mr. Jim Vasile, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, Washington, DC 20036, Attorney for Public Utility District No. 1 of Chelan County.

h. FERC Contact: Jim Hastreiter (503) 326–5858.

i. Comment Date: December 18, 1997.

j. Description of Filing: The Public Utility District No. 1 of Chelan County (licensee) has filed, for Commission approval, an Interim Steelhead Protection Plan. The plan includes modifications or additions to structures and operations at the Rocky Reach and Rock Island Hydroelectric Projects that may affect migrating steelhead trout. The National Marine Fisheries Service has listed steelhead in the Upper Columbia River as endangered under the Endangered Species Act. The principle components of the plan include modifications to, and continuation of, the juvenile fish bypass development program; a squawfish removal program; an interim spill program; and a hatchery compensation program.

This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters that title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30745 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5927–2]

Agency Information Collection Activities: Renewal of Existing Collection; Comment Request; National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Reports, EPA ICR No. 229.11, and OMB Control No. 2040–0004, expires May 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 23, 1998. All public comments shall be submitted to: ATTN: DMR ICR Comment Clerk (W–97–19), Water Docket MC–4101, U.S. EPA, Room 2616 Mall, 401 M. Street, S.W., Washington, D.C. 20460.

Please submit the original and three comments and enclosures (including references). Comments must be received or post-marked by midnight no later than January 23, 1998. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to: ow-docket@epamail.epa.gov Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–97–19. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 5.1 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The record for this proposed Information Collection Request (ICR) revision has been established under docket number W–97–19, and includes supporting documentation as well as printed, paper versions of electronic comments. It does not include any information claimed as CBI. The record is available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at the Water Docket, Room M2616, Washington, DC 20460. For access to the docket materials, please call (202) 260–3027 to schedule an appointment.

ADDRESSES: A copy of the proposed ICR will be available at the Water Docket (W–97–19), Mailcode 4101, Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20460. Copies of the proposed ICR can be obtained free of charge by writing to this address.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Telephone: (202)260–6814, Fax: (202) 260–9544, E-mail: Lee.Angela@EPAmail.EPA.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are NPDES

permittees including publicly owned treatment works, privately owned treatment works industrial facilities, and storm water permittees. The sewage sludge record keeping and reporting requirements identified in this ICR apply to treatment works (public and private) treating domestic sewage and to domestic septage haulers.

Title: NPDES/Sewage Sludge Monitoring Reports, EPA ICR No. 0229, and OMB Control No. 2040–0004, expiring May 31, 1998.

Abstract: This ICR estimates the current monitoring, reporting, and record keeping burden and costs associated with submitting and reviewing Discharge Monitoring Reports (DMRs), sewage sludge monitoring reports, and other monitoring reports under the Environmental Protection Agency's (EPA) NPDES program. The NPDES program regulations, codified at 40 CFR parts 122 through 125, require permitted municipal and non-municipal point source discharges to collect, analyze, and submit data on their wastewater discharges. Under these regulations, the permittee is required to collect and analyze wastewater samples or have the analysis performed at an outside laboratory and report the results to the permitting authority (EPA or an authorized NPDES State) using DMRs, a pre-printed form used for reporting pollutant discharge information. Sample monitoring, analysis, and reporting frequencies vary by permit, but must be performed at least annually for all permitted discharges except for certain storm water discharges.

Upon renewal of this ICR, the permitting authority will continue to require NPDES and sewage sludge facilities to report pollutant discharge monitoring data. The permitting authority will use the data from these forms to assess permittee compliance, modify/add new permit requirements, and revise effluent guidelines. The monitoring data required of NPDES and sewage sludge facilities represents the minimum information necessary to achieve the Agency's goals and satisfy regulatory standards.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates that 131,460 NPDES permittees and 24,346 sludge permittees will perform sample collection, pollutant analysis, reporting and record keeping as part their NPDES permit requirements to collect and report discharge monitoring data to permit authorities. The reporting frequency varies depending on the nature and effect of the discharge, but, except for storm water discharge, is not less than annually. Table 1 presents a summary of the estimated time and financial resources (burden) for NPDES (and sludge) facilities for submitting DMRs. The record keeping burden for NPDES permittees (other than sludge facilities) is reported in the Compliance Assessment ICR, OMB Control Number 2040–0110. There are no capital costs associated with this ICR because all monitoring and record keeping are performed using equipment that NPDES facilities already have as a routine part of running their facility or the facilities send their samples to outside sources. Annual sample analysis cost is estimated to be $281,277,550 nationwide for facilities that send their samples to outside sources for analysis.

TABLE 1.—SUMMARY OF BURDEN AND COSTS FOR THE DISCHARGE MONITORING REPORTS INFORMATION COLLECTION REQUEST

Category	Burden
Annual Pollutant Sampling Burden (hours) (A)	3,085,230
Annual Pollutant Analysis Burden (hours) (B)	2,410,081
Annual DMR Reporting Burden (hours) (C)	1,255,084
Total Response Burden (hours) (A+B+C)	6,750,395
Annual Record keeping Burden (hours)	12,326
Annual Contractor Sample Analysis Cost ($)	$281,277,550

TABLE 1.—SUMMARY OF BURDEN AND COSTS FOR THE DISCHARGE MONITORING REPORTS INFORMATION COLLECTION REQUEST—Continued

Category	Burden
Annual Number of Responses (D)	632,805
Average Time per Response (hours) (A+B+C)/(D)	10.67
Total Burden Hours for Respondents	6,762,721
Annual State Burden (hours)	134,811
Annual Federal Burden (hours)	44,462

EPA issued a April 19, 1996 policy memorandum entitled, ''Interim Guidance for Performance-Based Reductions of NPDES Permit Monitoring Frequencies.'' EPA estimated that this guidance would result in a 26 percent reduction in monitoring burden (about 4,680,000 hours) for NPDES permittees and amended the 1995 DMR ICR's total burden to reflect this expected reduction. The amendment was approved by OMB in 1996 with a total burden of 13,333,396 hours. The proposed ICR incorporates the effect of the 1996 DMR ICR modification in the specific areas where a reduction in burden is expected. EPA has changed the presentation of the total burden in the proposed DMR ICR to reflect the new approach in reporting burden required by the 1995 Paperwork Reduction Act (PRA). The PRA requires outside contractor costs (i.e. the cost for analysis of pollutants conducted by an outside laboratory) to be disaggregated and reported separately in dollars rather than burden hours. The total burden hours for this draft ICR is 6,762,721 hours and $281,277,550 in capital costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 18, 1997.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 97–30814 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5927–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years ICR Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; EPA ICR # 1718.02; OMB No. 2060–0308; expires 3/31/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 23, 1998.

ADDRESSES: U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2242A), 401 M Street SW, Washington, D.C. 20460. Copies of the ICR can be obtained free of charge by contacting Ervin Pickell as provided below.

FOR FURTHER INFORMATION CONTACT: Ervin Pickell, Telephone: (303) 969–6485; Facsimile number: (303) 969–6490; E-MAIL: pickell.erv@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those who act as the transferor or the transferee of red dyed low sulfur highway diesel fuel. This is generally fuel terminals, truck distributors of such product and tax exempt end users.

Title: Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Years (OMB Control number 2060–0308; EPA ICR # 1718.02.) expiring 03/31/98.

Abstract: Section 211(g)(2) of the Clean Air Act (CAA) provides that no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which contains a concentration of sulfur in excess of 0.05% by weight, or which fails to meet a stated cetane index or an alternative aromatic level to be prescribed by the Administrator. Section 211(i) of the CAA prohibits the manufacture, sale, supply, transport or introduction into commerce of motor vehicle diesel fuel which fails to meet the quality requirements. The Act required the Administrator to promulgate regulations to ''implement and enforce'' the quality requirements. Congress specifically provided that ''The Administrator may require manufacturers and importers of diesel fuel not intended for use in motor vehicles to dye such fuel * * * to segregate it from motor vehicle diesel fuel.'' The regulatory requirements promulgated by EPA are found at 40 CFR § 80.29. The dye requirement for high sulfur fuel was required by EPA to help enforce the requirement that only low sulfur diesel be used for highway vehicles. The dye is an important deterrence to violating the Congressionally mandated requirement, especially given the very large economic incentive to violate the law (high sulfur diesel is cheaper to produce and there are no highway taxes associated with it). Because the Internal Revenue Service promulgated a red dye requirement that covers both untaxed high sulfur diesel fuel (for off-road use) and untaxed low sulfur highway diesel fuel sold to tax-exempt entities, it was necessary for the EPA to include in its dye provisions a requirement that product transfer documents for the relatively low volume of dyed low sulfur fuel that is introduced into commerce state that the product is low sulfur tax exempt fuel. Otherwise, the EPA dye requirement would have been rendered meaningless since the Agency would not have been able to distinguish red dyed high sulfur product from red dyed low sulfur tax exempt product. EPA believes the requirement is also useful to distributors and end users in assuring their compliance. Since the IRS, not the EPA, requires the dye to be added to low sulfur tax exempt diesel fuel, the only EPA requirement subject to the ICR is the requirement that the customary business practice (CBP) product transfer document from the terminal (where the dye is added) to the tax exempt end user state that the fuel is dyed low sulfur tax exempt fuel. EPA allows industry to use preprinted product codes to provide the information. For this limited category of diesel fuel transactions the recordkeeping requirement is mandatory and is authorized by section 211 of the CAA 42 U.S.C. 7545, section 114 of the CAA, 42 U.S.C. 7414 and section 208 of the CAA, 42 U.S.C. 7542 and 40 CFR § 80.29. Confidentiality provisions are found at 40 CFR Part 2. The requirement, which has been in effect for several years, imposes almost no measurable annual burden on the affected parties. The transfer documents carrying the information are CBP documents. The information is preprinted and the truckers and end users have no measurable hourly burden associated with receiving and maintaining these CBP documents. The proposed ICR utilizes assumptions that are only slightly different from the original ICR. The burden statements below mention the basic assumptions used.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

In addition to this information, you may obtain a copy of the draft ICR supporting statement as provided above.

All parties that must maintain records under the regulation have a 5 year retention requirement.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: For highway diesel fuel terminals the dyed status of diesel fuel is reflected in CBP documents that were prepared before the diesel sulfur rule was promulgated. There are about

1,843 entities that add dye to low sulfur non-taxed fuel. The frequency of response is estimated to be about 170 loads of fuel released per year per terminal. Total burden for all terminals is about 87 hours per year. There are no annual operating costs, purchased service costs or capital costs.

Hourly burdens for truckers who transport dyed low sulfur diesel fuel: These parties transfer the CBP product transfer documents, which is no change from the business practice before the rule's requirement was promulgated. There is no measurable hourly burden per response. The proposed ICR assumes that about 1,200 truckers haul about 261 loads of non-taxed low sulfur diesel fuel per year, and that the CBP transfer documents that were used before the diesel sulfur rule was promulgated reflect the dyed status of the diesel fuel. As a result, there are no measurable additional operating costs, purchased services or capital costs.

Hourly burdens for end users (wholesale-purchaser-consumers of non-taxed low sulfur diesel fuel): These parties receive the transfer documents CBP. There is no measurable hourly burden per response. The proposed ICR assumes that about 20,000 end users receive paperwork an average of about 15 times each. There are no measurable operating costs, purchased services or capital costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 7, 1997.

Sylvia K. Lowrance,

Principal Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–30820 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5926–4]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Clean Air Act section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. These accidental release prevention requirements build on the chemical safety work begun by the Emergency Planning and Community Right-to-Know Act (EPCRA) which sets forth requirements for industry, State and local governments. On June 20, 1996, EPA published the final rule for risk management programs to address prevention of accidental releases.

An estimated 66,000 facilities are subject to this regulation based on the quantity of regulated substances they have on-site. Facilities that are subject will be required to implement a risk management program at their facility, and submit a summary of this information to a central location specified by EPA. This information will be helpful to State and local government entities responsible for chemical emergency preparedness and prevention. It will also be useful to environmental and community organizations, and the public in understanding the chemical risks in their communities. In addition, we hope the availability of this information will stimulate a dialogue between industry and the public to improve accident prevention and emergency response practices.

The Accident Prevention Subcommittee was created in September 1996 to advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on these chemical accident prevention issues, specifically, section 112(r) of the Clean Air Act.

DATES: The Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public meeting on December 17, 1997 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Hall of States (Room 383) located at 444 North Capitol St., NW, Washington D.C., near Union Station. Members of the public are welcome to attend in person.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting, should contact Karen Shanahan, Designated Federal Official, U.S. EPA (5104), 401 M. St., SW, Washington DC 20460, via the Internet at: shanahan.karen@epamail.epa.gov, by telephone at (202) 260–2711 or FAX at (202) 260–1686.

SUPPLEMENTARY INFORMATION:

Agenda

I. Opening Remarks—Jim Makris (8:30–9:00)
II. Update on RMP*Info and RMP*Submit (9:00–11:45)
III. Comments from the public (11:45–12:00)
IV. RMP Implementation Workgroup Update (1:30–3:00)
V. Other Business (3:15–4:15)
VI. Comments from the public (4:15–4:30)

Members of the public who wish to make a brief oral presentation in person in Washington D.C. to the Subcommittee at the December 17 meeting, must contact Karen Shanahan in writing (by letter, fax, or email—see previously stated information) no later than December 10, 1997 in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee up through the date of the meeting. Please address such material to Karen Shanahan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than thirty minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Additional information on the Accident Prevention Subcommittee and Electronic Submission Workgroup are available on the Internet at: http://www.epa.gov/swercepp/acc-pre.html

If you would like to automatically receive future information on the Accident Prevention Subcommittee and its Workgroups by email, please send an email to Karen Shanahan at: shanahan.karen@epamail.epa.gov requesting to be put on the RMP email list. Please include your name, address and phone number.

Dated: November 19, 1997.

Karen Shanahan,

Designated Federal Official.

[FR Doc. 97–30819 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5927–3]

Full Delegation of Authority to Commonwealth of Virginia for the Prevention of Significant Deterioration Site-Specific Rulemaking for Merck & Co., Inc. Stonewall Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: The EPA is delegating to the Commonwealth of Virginia the authority to implement and enforce the site-specific rule for the Prevention of Significant Deterioration of Air Quality (PSD) for the Merck & Co., Inc. Stonewall Plant in Elkton, Virginia. The Commonwealth of Virginia has requested that EPA delegate to the Commonwealth the authority to implement and enforce this site-specific PSD rule. The Regional Administrator has determined that such a delegation is appropriate, with the conditions described in this notice.

DATES: This delegation is effective on November 24, 1997.

ADDRESSES: *Docket*. Copies of the delegation of authority request and accompanying support documents are available for public inspection during normal business hours at the following offices: U.S. EPA, Region III, 841 Chestnut Street, Philadelphia, PA, 19107–4431, (215) 566–2064. Virginia Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 1129, Harrisonburg, Virginia 22801–1129, (540) 574–7800.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Moran, U.S. Environmental Protection Agency, Region III, Air, Radiation & Toxics Division, 841 Chestnut Street (3AT23), Philadelphia, PA 19107–4431, (215) 566–2064.

SUPPLEMENTARY INFORMATION: In a final rule published on October 8, 1997, EPA promulgated a site-specific PSD rule which applies only to the Merck & Co., Inc. (Merck) Stonewall Plant in Elkton, Virginia, in order to implement a project under the Project XL program. See 62 FR 52622 (October 8, 1997) and 40 CFR 52.2454. This site-specific PSD rule authorizes the Administrator to delegate the responsibility to implement and enforce this rule. The Commonwealth of Virginia currently implements the federal PSD program regulations codified at 40 CFR 52.21 under a delegation of authority from EPA effective on June 3, 1981. See 40 CFR 52.2451 and 46 FR 29753 (June 3, 1981). On October 27, 1997, the Director of the Virginia Department of Environmental Quality (VADEQ) sent to EPA Region III a letter which requested full delegation of authority for the implementation and enforcement of the site-specific PSD rule for the Merck Stonewall Plant.

In the preamble to the proposed site-specific rulemaking for the Merck XL project, and in the Merck's Project XL proposed Final Project Agreement, EPA had stated its intention to delegate the final site-specific PSD rule to the Commonwealth of Virginia. See 62 FR 15310 (March 31, 1997). EPA received no adverse comments on this approach during the public comment period for the proposed site-specific rulemaking. In the notice of final rulemaking for the Merck XL project, EPA also explained its intent to delegate to VADEQ the authority to implement and enforce the PSD site-specific rule. See 62 FR 52623 (October 8, 1997).

Section 301 of the Clean Air Act, in conjunction with sections 101 and 110, authorizes the Administrator to delegate her authority to implement and enforce the PSD regulations to any state which has submitted adequate implementation and enforcement procedures. Further, 40 CFR 52.2454(o) authorizes the Administrator to delegate the site-specific PSD rule for the Merck Stonewall Plant. The Regional Administrator has determined that the Commonwealth's request for delegation of the site-specific PSD rule for the Merck Stonewall Plant is appropriate, subject to the conditions set forth below. EPA has reviewed the pertinent laws of the Commonwealth of Virginia and the rules and regulations thereof, and has determined that they provide an adequate and effective procedure for the implementation of Merck's site-specific PSD regulation. On September 11, 1997, the State Air Pollution Control Board of the Commonwealth of Virginia (Board) approved an order granting a variance (9 VAC 5 Chapter 190) to the Merck Stonewall Plant for purposes of implementing the XL project. The variance contains site-specific PSD provisions consistent with those of EPA's final rulemaking. On October 1, 1997, the Board approved a regulation (9 VAC 5–190–110) which incorporated by reference the provisions of EPA's final site-specific PSD rule (as signed by the EPA Administrator on September 30, 1997). EPA has determined that the order and the variance regulation provide the Commonwealth with the authority to implement and enforce the site-specific PSD rule. Therefore, pursuant to 40 CFR 52.2454(o), EPA hereby delegates authority to implement and enforce the site-specific PSD rule for the Merck Stonewall Plant, 40 CFR 52.2454, to the Commonwealth of Virginia as follows:

1. Authority is delegated for 40 CFR 52.2454 only for the Merck Stonewall Plant in Elkton, Virginia, since that is the only source subject to this regulation.

2. If at any time there is a conflict between a Commonwealth regulation and a Federal regulation (40 CFR 52.2454), the Federal regulation must be applied if it is more stringent than that of the Commonwealth. If the Commonwealth does not have the authority to implement a Federal regulation that is more stringent than the applicable Commonwealth regulation, the pertinent portion of the authority may be revoked.

3. If the Regional Administrator determines that the Commonwealth's procedures for implementing all portions of the site-specific PSD regulation are inadequate, or that the site-specific PSD regulation is not being effectively carried out, this authority may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the VADEQ.

4. Enforcement of the Merck site-specific PSD rule in the Commonwealth of Virginia will be the primary responsibility of the VADEQ. If the Commonwealth determines that such enforcement is not feasible and so notifies EPA, or where the Commonwealth acts in a manner inconsistent with the terms of this granted authority, EPA will exercise its concurrent enforcement authority pursuant to Sections 113 and 167 of the Clean Air Act. In accordance with Sections 113 and 167 of the Clean Air Act, EPA reserves the right to commence an enforcement action against Merck in violation of the site-specific PSD requirements should the Commonwealth of Virginia fail to take such an enforcement action or, in the opinion of EPA, fail to pursue a timely or appropriate enforcement action.

5. Acceptance of this delegation of the presently promulgated site-specific PSD regulation does not commit the Commonwealth of Virginia to request or implement enforcement authority for future standards and requirements.

6. The Commonwealth and EPA will develop a system of communication sufficient to guarantee a program that includes, at a minimum, the items described below:

a. Each agency is informed of the current compliance status of the Merck Stonewall Plant;

b. The VADEQ shall send a copy of the preliminary determination and public comment notices required under

paragraph (m) of 40 CFR 52.2454 to EPA Region III at the same time the notice is being forwarded for publication in the newspaper.

c. The VADEQ will forward to EPA Region III copies of the final PSD permit and any future permit modifications at the time of issuance.

7. The VADEQ will obtain prior EPA concurrence on any matter involving the interpretation of sections 160–169 of the Clean Air Act or 40 CFR 52.2454 to the extent that implementation, review, administration or enforcement of these sections have not been covered by determinations or guidance sent by EPA to the VADEQ.

8. This delegation of authority should not be construed as a transfer of PSD responsibility under section 110(a)(2)(J) of the Clean Air Act, since such a transfer would involve different procedures and considerations.

Delegation: Pursuant to the authority delegated to him by the Administrator, the Regional Administrator is formally notifying the Director of the VADEQ that the Commonwealth is hereby delegated the authority to implement and enforce the site-specific PSD rule for the Merck Stonewall Plant, 40 CFR 52.2454, as of the publication date of this notice.

ADDITIONAL INFORMATION:

A. Effective Date

Pursuant to 5 U.S.C. 553(d)(3) and 42 U.S.C. 6930(b)(3), the Regional Administrator finds good cause for making this delegation of authority effective immediately because it is an administrative change and not one of substantive content. Further, the Merck & Co., Inc. Stonewall Plant is the only regulated entity affected by this delegation. Merck has full notice of this delegation and is prepared to comply immediately with the permit to be issued expeditiously under the rule that is being delegated to the Commonwealth of Virginia.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This delegation would not have a significant impact on a substantial number of small entities because it only affects one source, the Merck Stonewall Plant, which is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

As noted above, this delegation is limited to Merck's facility in Elkton, Virginia. EPA has determined that this delegation contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this delegation does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's delegation is not subject to the requirements of sections 202 and 205 of the UMRA.

Dated: November 17, 1997.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 97–30811 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5926–5]

Notice of Availability of and Initiation of a 30 Day Public Comment Period for Two Administrative Orders on Consent for de minimis Waste Contributors and One Administrative Order on Consent for a de micromis Waste Contributor Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on October 15, 1997, 3 administrative orders on consent (''Orders'') between the United States Environmental Protection Agency, Region VIII and various parties potentially responsible for costs incurred by the United States for cleaning up the Summitville Mine Superfund Site (collectively, ''the Settling Parties'') were approved by the Assistant Attorney General of the Department of Justice, Environment and Natural Resources Division, on behalf of the Attorney General of the United States.

Because of the minimal nature, by volume and toxicity, of the hazardous substances allegedly contributed by the Settling Parties to the Site, EPA determined that the Settling Parties are eligible for either a *de minimis* or *de micromis* settlement in accordance with Section 122(g) of CERCLA.

The first settlement is a *de micromis* Order with Newmont Exploration Limited, Newmont Mining Corporation, and Newmont Gold Company (collectively, ''Newmont''). It settles Newmont's potential liabilities under CERCLA Sections 106 and 107 and RCRA Section 7003 for extremely limited historic exploration activities Newmont undertook at the Site. Because of the minuscule nature of Newmont's contribution of waste at the Site, and in accordance with EPA guidance, EPA is entering into this without requiring the payment of a settlement amount.

EPA is also entering into 2 *de minimis* Orders—one with ASARCO, Inc. and one with ARCO Environmental Remediation, L.L.C. These Orders settle ARCO and ASARCO's potential liabilities under CERCLA Sections 106 and 107 and RCRA Section 7003 for the limited historic exploration activities they undertook at the Site. ASARCO and ARCO are paying the United States settlement amounts of $86,052.73 and $95,000, respectively. All 3 Orders are based on the respective applicable EPA model Orders.

EPA Region VIII will receive comments relating to the proposed

Orders for a period of thirty days from the date of publication of this notice. Comments should be addressed to Nancy Mangone, Enforcement Attorney (8ENF–L), U.S. EPA Region VIII, 999 18th Street, Denver, Colorado 80202 and should refer to the Summitville Mine Superfund Site, EPA Docket Nos. CERCLA–VIII–98–02, CERCLA–VIII–98–03, and CERCLA–VIII–98–04. In accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request a public meeting in the affected areas.

The proposed Orders may be examined in person at the Superfund Records Center, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202, (303) 312–6489. A copy of each Order may also be obtained by mail from the EPA Region VIII Superfund Records Center (8EPR–PS) at the address listed above. In requesting a copy, please refer to the referenced case and number. There is no cost for requesting this document.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. EPA Region VIII.

CERCLA Section 122(g)(4) De Micromis Administrative Order on Consent

In the Matter of: Summitville Mine Superfund Site, Site No. Y3; Newmont Exploration Limited, Newmont Gold Company, and Newmont Mining Corporation; Respondents.

Proceeding under section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. § 9622(g)(4)). EPA Docket Number CERCLA–VIII–98–02.

I. Jurisdiction

1. This Administrative Order on Consent (''Consent Order'' or ''Order'') is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4), to reach settlements in actions under section 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14–14–E. This authority has been redelegated to the Assistant Regional Administrator for Enforcement, Compliance and Environmental Justice.

2. This Order is issued to Newmont Exploration Limited, Newmont Mining Corporation, and Newmont Gold Company (Respondents). The Respondents consent to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. Statement of Purpose

3. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final *de micromis* settlement between the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), which resolves Respondents potential civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, for injunctive relief with regard to the Site, and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating the potentially responsible parties covered by this Order from further involvement at the Site; and

c. to protect Respondents, and to the extent provided herein, their affliates, successors and assigns, from any lawsuit a potentially responsible party could bring against them for response costs incurred and to be incurred at or in connection with the Site and to provide full and complete contribution protection for Respondents, and to the extent provided herein, their affliates, successors and assigns, with regard to the Site pursuant to Sections 122(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9622(f)(2) and 9622(g)(5).

III. Definitions

Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Consent Order or *Order* shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

Day shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.

EPA shall mean the United States Environmental Protection Agency and any successor departments or agencies.

EPA Hazardous Substance Superfund shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

Information currently known to the United States shall mean that information and those documents contained in the Administrative Record and Site File for the Site as of the effective date of this Order.

New Information shall mean information not contained in the Administrative Record or Site File for the Site as of the effective date of this Order.

Paragraph shall mean a portion of this Consent Order identified by an Arabic numeral.

Parties shall mean EPA and the Respondents.

Respondents shall mean Newmont Exploration Limited, Newmont Mining Corporation, and Newmont Gold Company.

Response Costs shall mean all costs of ''response'' as that term is defined by Section 101(25) of CERCLA.

Section shall mean a portion of this Consent Order identified by a Roman numeral.

Site shall mean the Summitville Mine Superfund Site Remedial Investigation/Feasibility Study Area within Rio Grande County, Colorado. Approximately 550 acres of the Site, known as the Summitville Minesite, have been disturbed by mining activities and are currently undergoing remedial action. As depicted on the map attached as Appendix A, the Site consists of portions of the Alamosa River Watershed EPA believes may have been impacted by releases of hazardous substances from the Summitville Minesite. More specifically, the Site includes the following areas: Area 1—*Summitville Mine Site*—The area within the mine permit boundaries; Area 2—*Wightman Fork*-The Wightman Fork and associated wetlands between the down stream mine permit boundary to the confluence with the Alamosa River; Area 3—*Alamosa River*-The Alamosa River and associated wetlands from the confluence with the Wightman Fork downstream to the inlet of the Terrace Reservoir; Area 4—*Terrace Reservoir*-The area which contains the Terrace Reservoir; and Area 5—*Below Terrace*

Reservoir-The area below the Terrace Reservoir which has been impacted by contamination transported by the Alamosa River and irrigation canals.

United States shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. Statement of Facts

4. The United States Environmental Protection Agency (EPA) initiated removal response actions at the Site on December 18, 1992 to address releases or threatened releases of hazardous substances into the Alamosa River and surrounding environment pursuant to the President's authority under Sections 104 and 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. 9604 and 9606 (CERCLA).

5. On May 31, 1994, EPA listed the Site on the National Priorities List as a result of releases or threatened releases of hazardous substances at or from the Site.

6. On December 15, 1994, EPA issued four Interim Records of Decision selecting the interim remedial actions to be implemented for the following activities and/or areas at the Summitville Mine Site: Water Treatment (WT IROD), Reclamation, the Heap Leach Pad (HLP IROD) and the Cropsy Waste Pile, Beaver Mud Dump/ Summitville Dam Impoundment, and Mine Pits (CWP IROD).

7. As of March 31, 1997, the United States incurred approximately $109 million in response costs responding to the release or threatened release of hazardous substances at or in connection with the Site. The United States continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

8. Newmont Exploration Limited (NEL) conducted extremely limited exploration activities at the Site. NEL was previously a wholly owned subsidiary of Newmont Mining Corporation and is currently a wholly owned subsidiary of Newmont Gold Company.

9. Newmont Exploration Limited leased some property within the Site for approximately seven months from June 1953 to January 1954. Pursuant to the lease, limited exploratory activities were conducted, including conducting nonintrusive geophysical surveys of the area, collecting small surface soil and rock samples for assaying, drilling approximately nine small diameter exploratory holes and conducting limited reconnaissance examinations of portions of the underground mine workings. Exploratory drilling activities such as those conducted at the Site are designed to collect core samples to evaluate the geology of the area. Respondents assert that such exploratory activities did not generate mine wastes.

10. The total volume of waste rock, tailings and other mine waste (including the Heap Leach Pad) requiring remediation at the Site is approximately 11 million cubic yards. According to the WT IROD, approximately 321,000 pounds of copper per year, if left untreated, would contaminate the receiving waters surrounding the Site, including the Wightman Fork and Alamosa River. EPA has determined parties are eligible for a *de minimis* settlement if their contribution of mine waste and metals loading is equal to or less than 3% of the total volume of hazardous substances contributed to each of these media. The Respondents' contribution of hazardous substances to these media is below the 3% *de minimis* cut-off established by EPA for the Site. *De micromis* parties are parties that have generated less than .0001% of the hazardous substances found at the Site. Respondents' alleged contribution is less than .0001% of the hazardous substances found at the Site.

11. Based on information currently known to the United States, EPA has calculated the Respondents' *de micromis* eligibility as follows: Respondents assert that the activities of NEL did not contribute any mine wastes to the Site. Even assuming a worst case scenario where all of the materials generated by NEL's exploration activity were deposited at the Site, EPA has estimated that the amount of hazardous substances allegedly contributed to the Site by Respondents constitutes substantially less than .0001% of the total volume of waste rock, tailings or mine waste requiring remediation at the Site. EPA has also determined that the Respondents' activities have not contributed any copper loading to the waters at or emanating from the Site.

12. The material allegedly generated and disposed of by the Respondents therefore involves only a minuscule portion of the total hazardous substances generated or disposed of at the Site. EPA has also concluded that the hazardous substances allegedly contributed to the Site by Respondents are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

13. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund will be $152 million. EPA has determined that the amount of waste which may have been contributed to the Site by the Respondents is so minor that it would be inequitable to require them to help finance or perform cleanup at the Site.

V. Determination

14. Based upon the Statement of Facts set forth above and on the information currently known to the United States, EPA has determined that:

(1) The Site is a ''facility'' as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

(2) Each of the Respondents is a ''person'' as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

(3) Each of the Respondents may be a ''potentially responsible party'' within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(4) There has been an actual or threatened ''release'' of a ''hazardous substance'' from the Site as those terms are defined in Sections 101 (22) and (14) of CERCLA, 42 U.S.C. 9601 (22) and (14).

(5) The amount of hazardous substances contributed to the Site by the Respondents and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Respondents are minuscule in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

(6) Respondents are eligible for a *de micromis* settlement because they have contributed no more than a minuscule amount of hazardous substance, if any, to the Site.

(7) The terms of this Consent Order are consistent with EPA policy and guidance for settlements with *de micromis* waste contributors, including but not limited to, ''Revised Guidance on CERCLA Settlements with De Micromis Waste Contribution,'' OSWER Directive #9834.17 (June 3, 1996).

(8) Prompt final settlement with the Respondents is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(9) The settlement of this case without litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving any liability that the Respondents may have for response actions and response costs with respect

to all releases or threatened releases at or in connection with the Site.

VI. Order

15. Based upon the Information currently known to the United States and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby *Agreed to and Ordered;*

VII. Parties Bound

16. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate or other legal status of the Respondents including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondents' responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

VIII. Certification of Respondents

17. By signing this Consent Order, the Respondents certify that, to the best of their knowledge and belief, they have:

i. conducted a thorough, comprehensive, good faith search for documents, and have fully and accurately disclosed to EPA, all non-privileged documents currently in their possession, or in the possession of their officers, directors, employees, contractors or agents, which relate in any way to their liabilities under CERCLA and RCRA for ownership, operation, exploration activities or control of the Site;

ii. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to their potential CERCLA and RCRA liabilities regarding the Site after notification of such potential liabilities; and

iii. fully complied to EPA's satisfaction with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e).

IX. Covenants Not To Sue

18. a. Except as provided in Section X (Reservation of Rights) of this Order, the United States covenants not to sue or take any other civil or administrative action against the Respondents for reimbursement of response costs or for injunctive relief pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, relating to the Site.

b. The United States' covenant not to sue extends to Respondents and to their affiliates, successors and assigns, but only to the extent that the liability of such affiliates, successors and assigns is derivative of Respondents' liability for those acts set forth in Paragraph 9, Section IV of this Order. The United States' covenant not to sue does not extend to any other person.

X. Reservation of Rights

19. The covenant not to sue by the United States set forth in Paragraph 18 of this Order does not pertain to any matters other than those expressly specified in Paragraph 18. The United States reserves, and this Order is without prejudice to, all rights against the Respondents with respect to all other matters, including but not limited to the following:

(a) criminal liability;

(b) any liability against Respondents that results from their future disposal activities at the Site; or

(c) liability for damages for injury to, destruction of, or loss of natural resources, including any cost of assessing the injury to, destruction of, or loss of such natural resources.

20. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against the Respondents seeking to compel Respondents to perform response actions at the Site and/or to reimburse the United States for response costs if New Information is discovered that the Respondents no longer qualify for a *de micromis* settlement under the criteria stated in Paragraphs 10–12 of this Order.

21. For purposes of Paragraph 20, ''New Information'' shall not include any recalculation of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States.

XI. Covenant Not To Sue By Respondents

22. The Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees with respect to the Site or this Order, including, but not limited to:

i. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through Sections 106(b)(2) , 111, 112 or 113 of CERCLA, 42 U.S.C. 9606(b)(2) , 9611, 9612 or 9613;

ii. any claim arising out of response activities at the Site; and

iii. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. 9607 or 9613, relating to the Site.

23. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR 300.700(d).

24. The Respondents also waive any challenge they may have to any response action selected in any Action Memorandum, Interim Record of Decision or final Record of Decision for the Site.

XII. Effect of Settlement; Contribution Protection

25. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Order may have under applicable law. The United States and the Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

26. Respondents consent and agree to comply with and be bound by the term of this Order. The United States and the Respondents agree that this Order, Respondents' consent to this Order and actions in accordance with this Order shall not in any way constitute or be construed as an admission of any liability by Respondents or of any legal or factual matters set forth in this Order. Further, neither this Order, Respondents' consent to this Order, nor Respondents' actions in accordance with this Order shall be admissible in evidence against Respondents without their consent, except in a proceeding to enforce this Order. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts and Determinations contained in this Consent Order.

27. With regard to claims for contribution against Respondents and their affiliates, successors and assigns for matters addressed by this Order, the Parties hereto agree that Respondents

and their affiliates, successors and assigns are entitled, as of the effective date this Order, to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5) for ''matters addressed'' in this Consent Order. ''Matters addressed'' by this Order shall include all claims the United States has taken or brought or could bring or any other civil or administrative action the United States could take against Respondents, or their affiliates, successors and assigns only to the extent that their liability is derivative of Respondents' liability for those acts set forth in Paragraph 9, Section IV of this Order, for injunctive relief or for reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, related to the Site.

XIII. Public Comment

28. This Order shall be subject to a thirty-day public comment period in accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3), 42 U.S.C. 9622(i)(3), EPA may withdraw or modify its consent to this order if comments received disclose any facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

XIV. Attorney General Approval

29. The Attorney General or her designee has approved the settlement embodied in this order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4).

XV. Effective Date

30. The effective date of this Order shall be the date upon which the Assistant Regional Administrator, EPA Region VIII notifies the Respondents that the public comment period undertaken pursuant to Paragraph 28 of this Order has closed and that comments received, if any, do not require EPA's withdrawal from or the modification of any terms of this Order.

It is so agreed:

Newmont Mining Corporation, Newmont Exploration Limited and Newmont Gold Company.

Dated: July 28, 1997.

Joy E. Hansen,

Vice President.

It is so ordered and agreed:

Environmental Protection Agency, Region VIII.

Dated: September 2, 1997.

Martin Hestmark, for Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

CERCLA Section 122(g)(4) De Minimis Waste Contributor Administrative Order

In The Matter Of: Summitville Mine Superfund Site, Site No. 08–Y3; ARCO Environmental Remediation, L.L.C.; Respondent.

Proceeding Under Section 122(g)(4) Of The Comprehensive Environmental Response, Compensation, And Liability Act, As Amended (42 U.S.C. 9622(g)(4)). EPA Docket Number CERCLA–VIII–98–03.

I. Jurisdiction

1. This Administrative Order on Consent (Consent Order or Order) is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14–14–E. This authority has been redelegated to the Assistant Regional Administrator for Ecosystems Protection and Remediation.

2. This Order is issued to ARCO Environmental Remediation, L.L.C. (Respondent). The Respondent agrees to undertake all actions required by this Consent Order. The Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. Statement of Purpose

3. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement between the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), that allows Respondent to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, for injunctive relief with regard to the Site, and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating one of the potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondent for its fair share, as determined by EPA, of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and to provide full and complete contribution protection for Respondent with regard to the Site pursuant to Sections 122(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9622(f)(2) and 9622(g)(5).

III. Definitions

Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Consent Order or *Order* shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

Day shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

EPA shall mean the United States Environmental Protection Agency and any successor departments or agencies.

EPA Hazardous Substance Superfund shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

Information currently known to the United States shall mean that information and those documents contained in the Administrative Record and Site File for the Site as of the effective date of this Order.

Interest shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. 9607(a).

New Information shall mean information not contained in the Administrative Record or Site File for the Site as of the effective date of this Order.

Paragraph shall mean a portion of this Consent Order identified by an Arabic numeral.

Parties shall mean EPA and the Respondent.

Respondent shall mean ARCO Environmental Remediation, L.L.C.

Response Costs shall mean all costs of ''response'' as that term is defined by Section 101(25) of CERCLA.

Section shall mean a portion of this Consent Order identified by a roman numeral.

Site shall mean the Summitville Mine Superfund Site Remedial Investigation/Feasibility Study Area within Rio Grande County, Colorado. Approximately 550 acres of the Site, known as the Summitville Minesite, have been disturbed by mining activities and is currently undergoing remedial action. As depicted on the map attached as Appendix A, the Site consists of portions of the Alamosa River Watershed EPA believes may have been impacted by releases of hazardous substances from the Summitville Minesite. More specifically, the Site includes the following areas: Area 1-*Summitville Mine Site*—The area within the mine permit boundaries; Area 2-*Wightman Fork*—The Wightman Fork and associated wetlands between the down stream mine permit boundary to the confluence with the Alamosa River; Area 3-*Alamosa River*—The Alamosa River and associated wetlands from the confluence with the Wightman Fork downstream to the inlet of the Terrace Reservoir; Area 4-*Terrace Reservoir*—The area which contains the Terrace Reservoir; and Area 5-*Below Terrace Reservoir*—The area below the Terrace Reservoir which has been impacted by contamination transported by the Alamosa River and irrigation canals.

United States shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. Statement of Facts

EPA's Response Actions and Costs

4. The United States Environmental Protection Agency (EPA) initiated removal response actions at the Site on December 18, 1992 to address releases or threatened releases of hazardous substances into the Alamosa River and surrounding environment pursuant to the President's authority under Sections 104 and 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. 9604 and 9606(a) (CERCLA).

5. On May 31, 1994, EPA listed the Site on the National Priorities List as a result of releases or threatened releases of hazardous substances at or from the Site.

6. On December 15, 1994, EPA issued 4 Interim Records of Decision selecting the interim remedial actions to be implemented for the following activities and/or areas at the Summitville Mine Site: Water Treatment (WT IROD), Reclamation, the Heap Leach Pad (HLP IROD) and the Cropsy Waste Pile, Beaver Mud Dump/Summitville Dam Impoundment, and Mine Pits (CWP IROD).

7. As of March 31, 1997, the United States had incurred approximately $109 million in response costs responding to the release or threatened release of hazardous substances at or in connection with the Site. The United States continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

Respondent's Activities and Potential Liability

8. EPA alleges that the Respondent is liable for reimbursement of the United States' response costs pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

9. From mid-1979 until the latter part of 1983, Respondent's predecessor-in-interest, Anaconda Minerals Company (Anaconda), conducted exploration and related activities at the Site. Due to Site access limitations, severe weather and other adverse Site conditions, Anaconda's actual on-Site exploration activities were conducted for an aggregate period of approximately 17 months, with this period generally coinciding with the summer season of each of the years of 1979 through 1983.

10. Anaconda's exploration and related activities at the Site, as referred to in Paragraph 9 above, consisted of: (1) a core drilling program, consisting of the development of 380 drill holes. In accordance with the Colorado Mined Land Reclamation Division regulations applicable at the time, these surface drill holes were properly plugged with cement and abandoned; (2) limited access to and exploration of certain underground mine workings, including the Science Mine, Copper Hill Mine, Dexter Mine, Esmond Mine and Chandler Mine, for the purpose of mapping and sampling these workings only; (3) related on-Site activities such as access road maintenance and road construction; and (4) implementation of a hazard elimination program at the Site, including tailings dam stabilization work.

11. Based on Anaconda's findings from these limited exploration and related activities, Anaconda determined it would not be profitable to initiate mining operations at the Site. Accordingly, Anaconda terminated or assigned its leasehold interest in the Site in early 1984, without conducting any ore extraction or physical mine development activities.

12. Anaconda's surface drilling activities resulted in the generation of, at most, 363 cubic yards of waste rock, which may have remained on-Site. Waste rock extracted at the Site was mixed with cement and used to properly plug and close the drill holes, accordance with the Colorado Mined Land Reclamation Division regulations applicable at the time. Summitville Consolidated Mining Company Inc. subsequently mined, milled, processed or otherwise disturbed this same waste rock as a result of its unrelated mining operations.

De Minimis Eligibility

13. The total volume of waste rock, tailings and other mine waste (including the Heap Leach Pad) requiring remediation at the Site is approximately 11 million yds.[3] Four million, five hundred thousand cubic yards of this material is being remediated pursuant to the CWP IROD; 6.5 million cubic yards are being remediated pursuant to the HLP IROD.

14. According to the WT IROD, approximately 321,000 pounds of copper per year, if left untreated, would contaminate the receiving waters surrounding the Site, including the Wightman Fork and Alamosa River.

15. EPA has determined parties are eligible for a *de minimis* settlement if their contribution of mine waste and metals loading is equal to or less than 3% of the total volume of hazardous substances contributed to each of these media.

16. EPA has determined that the Respondent's contribution of hazardous substances to each of these media is below the 3% *de minimis* cut-off established by EPA for the Site.

17. Based on Information currently known to the United States, EPA has calculated the Respondent's *de minimis* eligibility as follows: (1) assuming all waste rock, approximately 363 cubic yards, generated by Anaconda during its drilling program remained on-Site, EPA has estimated that the amount of hazardous substances allegedly contributed to the Site by Respondent

constitutes approximately .0033% of the total volume of waste rock, tailings or mine waste requiring remediation at the Site; and (2) because Anaconda's drill holes were properly plugged and it did not rehabilitate or otherwise undertake mining operations in adits, tunnels or mine workings hydraulically connected to the Reynolds Adit, the Respondent's activities have not contributed any copper loading to the waters at or emanating from the Site.

18. As required by Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1), EPA has therefore determined that: (A) the amount of material allegedly contributed by the Respondent is minimal in comparison to the total hazardous substances generated or disposed of at the Site; and (B) the toxic or hazardous effect of the hazardous substances allegedly contributed to the Site by Respondent are minimal in comparison to the other hazardous substances at the Site.

19. Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1), further authorizes EPA to enter into expedited settlements under Sections 106 and 107 of CERCLA if such settlements involve only a minor portion of the response costs at the facility concerned. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund will be $152 million. EPA calculated the settlement amount to be paid by Respondent as follows: EPA and Respondent agree that the material generated and disposed of by Respondent came to be located in the areas to be remediated pursuant to CWP and HLP IRODs. EPA and Respondent estimated that of the 363 cubic yards of material generated and disposed of by Respondent on the Site, 123 cubic yards came to be located in the area to be remediated by the CWP and 240 cubic yards came to be located in the HLP. EPA then calculated the appropriate settlement amount by: (a) taking the amount it cost to remediate Respondent's volumetric share of the CWP; (b) calculating the cost EPA will incur to remediate Respondent's volumetric share of the HLP; (c) adding a percentage for Respondent's share of Sitewide costs; (d) estimating the enforcement costs associated with negotiating and finalizing this AOC; and (e) applying a 100% ''premium'' payment to Respondent's share of those estimated costs not yet incurred by EPA. In accordance with applicable EPA guidance, this 100% ''premium'' payment on estimated costs to be incurred provides consideration for EPA's granting the Respondent a covenant not to sue without the normal remedy cost overrun reopener.

20. Based on the factors identified in Paragraph 19 above, EPA determined that the appropriate amount to settle Respondent's potential CERCLA Section 106 and 107 and RCRA Section 7003 liabilities is $95,000. The settlement amount required to be paid by the Respondent pursuant to this Order therefore represents only a minor portion of the response costs to be recovered for the cleanup of the Site.

V. Determinations

21. Based upon the Statement of Facts set forth above and on the Information currently known to the United States, EPA has determined that:

(1) The Site is a ''facility'' as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

(2) The Respondent is a ''person'' as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

(3) The Respondent is a ''potentially responsible party'' within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(4) There has been an actual or threatened ''release'' of a ''hazardous substance'' from the Site as those terms are defined in Sections 101 (22) and (14) of CERCLA, 42 U.S.C. 9601 (22) and (14).

(5) The amount of hazardous substances contributed to the Site by the Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

(6) As to the Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(7) The terms of this Consent Order are consistent with EPA policy and guidance for settlements with *de minimis* waste contributors, including but not limited to, ''Standardizing the *De Minimis* Premium,'' (July 7, 1995), ''Streamlined Approach for Settling with *De Minimis* Waste Contributors under CERCLA Section 122(g)(1)(A),'' OSWER Directive No. 9834.7–1D (July 30, 1993), and ''Methodology for Early *De Minimis* Waste Contributor Settlements under CERCLA Section 122(g)(1)(A),'' OSWER Directive No. 9834.7–1C (June 2, 1992).

(8) Prompt settlement with the Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(9) The settlement of this case without litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving any liability that the Respondent may have for response actions and response costs with respect to all releases or threatened releases at or in connection with the Site.

VI. Order

22. Based upon the Information currently known to the United States and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby *Agreed to and Ordered:*

VII. Parties Bound

23. This Consent Order shall apply to and be binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate or other legal status of the Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

VIII. Payment

24. Within 10 days of the effective date of this Order, Respondents shall pay a total of $95,000 to the Hazardous Substance Superfund as provided below.

25. Payment shall be made by cashier's check made payable to ''EPA Hazardous Substance Superfund.'' The check shall reference the Site name, the name and address of the Respondent, EPA CERCLA Number 08–Y3 and DOJ Case No. 90–11–3–1133A and shall be sent to: Mellon Bank, EPA Region VIII, Attn: Superfund Accounting, P.O. Box 360859M, Pittsburgh, PA 15251.

26. If the Respondent fails to make full payment within the time required by Paragraph 25, Respondent shall pay Interest on the unpaid balance. In addition, if Respondent fails to make full payment as required by Paragraph 25, the United States may, in addition to any other available remedies or sanctions, bring an action against the Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. 9622(l), for failure to make timely payment.

27. The Respondents' payment includes an amount representing the Respondent's fair share of: (a) past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and (c) a significant premium to cover the risks associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Respondent's payment is based.

28. Payments made under this Section may be placed in a site-specific ''special'' or ''reimbursable'' account by EPA. This site-specific reimbursable account within the EPA Hazardous Substance Superfund shall be known as the Summitville Mine Superfund Site Special Account and shall be retained and used by EPA to conduct or finance the response actions at or in connection with the Site. Upon completion of the final remedial action for the Site, any balance remaining in the Summitville Mine Superfund Site Special Account shall be transferred by EPA to the general EPA Hazardous Substance Superfund.

IX. Certification of Respondents

29. By signing this Consent Order, the Respondent certifies, that, to the best of its knowledge and belief, it has:

(1) conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all non-privileged documents currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relate in any way to its liability under CERCLA and RCRA for ownership, operation, exploration activities or control of the Site;

(2) not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential CERCLA and RCRA liability regarding the Site after notification of such potential liability; and

(3) fully complied to EPA's satisfaction with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e).

X. Covenants Not To Sue

30. a. Except as provided in Section XI (Reservation of Rights) of this Order, the United States covenants not to sue or take any other civil or administrative action against the Respondent for reimbursement of response costs or for injunctive relief pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon full payment of the amount specified in Section VII (Payment) of this Order.

b. The United States' covenant not to sue extends to Respondent, and to its predecessors-in-interest, affiliates, successors and assigns, including the Anaconda Minerals Company and the Atlantic Richfield Company, only to the extent that the liability of such predecessors-in-interest, affiliates, successors and assigns is derivative of Respondent's liability for those acts of Anaconda Minerals Company as set forth in Paragraph 9–12, Section IV of this Order. The United States' covenant not to sue does not extend to any other person.

XI. Reservation of Rights

31. The covenants not to sue by the United States set forth in Paragraph 30 of this Order do not pertain to any matters other than those expressly specified in Paragraph 30. The United States reserves, and this Order is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to the following:

(a) claims based on a failure to make the payments required by Section VII (Payment) of this Order;

(b) criminal liability;

(c) any liability against Respondent that results from its future disposal activities at the Site; or

(d) liability for damages for injury to, destruction of, or loss of natural resources, including any cost of assessing the injury to, destruction of, or loss of such natural resources.

32. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against the Respondent seeking to compel Respondent to perform response actions at the Site and/or to reimburse the United States for additional costs of response if New Information is discovered that the Respondent contributed: (a) hazardous substances in an amount greater than 1% of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site; or (b) hazardous substances that contributed to the total copper loading to the waters at or emanating from the Site; or (c) hazardous substances at the Site which are significantly more toxic or are of significantly greater hazardous effect that other hazardous substances at the Site.

33. For purposes of Paragraph 32, ''New Information'' shall not include: (1) any recalculation of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States; (2) any recalculation of the Respondent's contribution of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States; or (3) a calculation of Anaconda's activities giving rise to a contribution to the total copper loading to the waters at or emanating from the Site based solely on Information currently known to the United States.

34. In the event the United States institutes judicial or administrative proceedings against the Respondent pursuant to Paragraph 32 above, the Respondent shall:

(i) be credited, in any subsequent settlement or administrative or judicial proceeding relating to the Site, with the $95,000 payment made pursuant to Paragraph 24 of this Order;

(ii) retain any defense it may have to liability and any claim it may have under any applicable statute or the common law with regard to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site; and

(iii) continue to grant any waiver or covenant previously granted to the United States under Section XI of this Order for the amount credited to the Respondent, but such waiver or covenant shall be null and void as to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site.

XII. Covenant Not To Sue By Respondent

35. The Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees with respect to the Site or this Order, including, but not limited to:

(1) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through Sections 106(b)(2), 111, 112 or 113 of CERCLA,

42 U.S.C. 9606(b)(2), 9611, 9612 or 9613;

(2) any claim arising out of response activities at the Site; and

(3) any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. 9607 or 9613, relating to the Site.

36. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR 300.700(d).

37. The Respondent also waives any challenge it may have to any response action selected in any Action Memorandum, Interim Record of Decision or final Record of Decision for the Site.

XIII. Effect of Settlement; Contribution Protection

38. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Order may have under applicable law. The United States and the Respondent each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

39. Respondent consents and agrees to comply with and be bound by the terms of this Order. The United States and the Respondent agree that this Order, Respondent's consent to this Order and actions in accordance with this Order shall not in any way constitute or be construed as an admission of any liability by Respondent or of any legal or factual matters set forth in this Order. Further, neither this Order, Respondent's consent to this Order, nor Respondent's actions in accordance with this Order shall be admissible in evidence against Respondent without its consent, except in a proceeding to enforce this Order. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts and Determinations contained in this Consent Order.

40. With regard to claims for contribution against the Respondent, the Parties hereto agree that, as of the effective date of this Order, the Respondent and its predecessors-in-interest, affiliates, successors and assigns, including the Anaconda Minerals Company and the Atlantic Richfield Company, is entitled to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5) for ''matters addressed'' in this Consent Order. ''Matters addressed'' by this Order shall include all claims the United States could bring or any other civil or administrative action the United States could take against the Respondent or its predecessors-in-interest, affiliates, successors and assigns, including the Anaconda Minerals Company and the Atlantic Richfield Company, for injunctive relief or for reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, related to the Site.

XIV. Public Comment

41. This Order shall be subject to a thirty-day public comment period in accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3), 42 U.S.C. 9622(i)(3), EPA may withdraw or modify its consent to this Order if comments received disclose any facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

XV. Attorney General Approval

42. The Attorney General or her designee has approved the settlement embodied in this Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4).

XVI. Effective Date

43. The effective date of this Order shall be the date upon which the Assistant Regional Administrator, EPA Region VIII notifies the Respondent that the public comment period undertaken pursuant to Paragraph 41 of this Order has closed and that comments received, if any, do not require EPA's withdrawal from or the modification of any terms of this Order.

It Is So Agreed:

ARCO Environmental Remediation, L.L.C.

Dated: July 2, 1997.

C. Richard Knowles,

President.

It Is So Ordered and Agreed:

Environmental Protection Agency, Region VIII.

Dated: September 2, 1997.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

In The Matter Of: Summitville Mine Superfund Site, Site No. 08–Y3; ASARCO Incorporated; Respondent.

Proceeding Under Section 122(g)(4) Of The Comprehensive Environmental Response, Compensation, And Liability Act, As Amended (42 U.S.C. 9622(g)(4)). EPA Docket Number CERCLA–VIII–98–04.

CERCLA Section 122(g)(4) De Minimis Waste Contributor Administrative Order

I. Jurisdiction

1. This Administrative Order on Consent (Consent Order or Order) is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14–14–E. This authority has been redelegated to the Assistant Regional Administrator for Ecosystem Protection and Remediation.

2. This Order is issued to ASARCO Incorporated (Respondent). The Respondent agrees to undertake all actions required by this Consent Order. The Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. Statement of Purpose

3. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement between the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), that allows Respondent to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, for injunctive relief with regard to the Site, and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating one of the potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondent for its fair share, as determined by EPA, of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and to provide full and complete contribution protection for Respondent with regard to the Site pursuant to Sections 122(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9622(f)(2) and 9622(g)(5).

III. Definitions

Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Consent Order or *Order* shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

Day shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

EPA shall mean the United States Environmental Protection Agency and any successor departments or agencies.

EPA Hazardous Substance Superfund shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

Information currently known to the United States shall mean that information and those documents contained in the Administrative Record and Site File for the Site as of the effective date of this Order.

Interest shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. 9607(a).

New Information shall mean information not contained in the Administrative Record or Site File for the Site as of the effective date of this Order.

Paragraph shall mean a portion of this Consent Order identified by an Arabic numeral.

Parties shall mean EPA and the Respondent.

Respondent shall mean ASARCO Incorporated.

Response Costs shall mean all costs of ''response'' as that term is defined by Section 101(25) of CERCLA.

Section shall mean a portion of this Consent Order identified by a roman numeral.

Site shall mean the Summitville Mine Superfund Site Remedial Investigation/ Feasibility Study Area within Rio Grande County, Colorado. Approximately 550 acres of the Site, known as the Summitville Minesite, have been disturbed by mining activities and is currently undergoing remedial action. As depicted on the map attached as Appendix A, the Site consists of portions of the Alamosa River Watershed EPA believes may have been impacted by releases of hazardous substances from the Summitville Minesite. More specifically, the Site includes the following areas: Area 1-*Summitville Mine Site*—The area within the mine permit boundaries; Area 2-*Wightman Fork*—The Wightman Fork and associated wetlands between the down stream mine permit boundary to the confluence with the Alamosa River; Area 3-*Alamosa River*—The Alamosa River and associated wetlands from the confluence with the Wightman Fork downstream to the inlet of the Terrace Reservoir; Area 4-*Terrace Reservoir*—The area which contains the Terrace Reservoir; and Area 5-*Below Terrace Reservoir*—The area below the Terrace Reservoir which has been impacted by contamination transported by the Alamosa River and irrigation canals.

United States shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. Statement of Facts

4. The United States Environmental Protection Agency (EPA) initiated removal response actions at the Site on December 18, 1992 to address releases or threatened releases of hazardous substances into the Alamosa River and surrounding environment pursuant to the President's authority under Sections 104 and 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. 9604 and 9606(a) (CERCLA).

5. On May 31, 1994, EPA listed the Site on the National Priorities List as a result of releases or threatened releases of hazardous substances at or from the Site.

6. On December 15, 1994, EPA issued 4 Interim Records of Decision selecting the interim remedial actions to be implemented for the following activities and/or areas at the Summitville Mine Site: Water Treatment (WT IROD), Reclamation, the Heap Leach Pad (HLP IROD) and the Cropsy Waste Pile, Beaver Mud Dump/Summitville Dam Impoundment, and Mine Pits (CWP IROD).

7. As of March 31, 1997, the United States incurred approximately $109 million in response costs responding to the release or threatened release of hazardous substances at or in connection with the Site. The United States continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

8. EPA alleges that the Respondent is liable for reimbursement of the United States' response costs pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

9. Respondent conducted sporadic exploration and related activities from 1974 through 1980 under a lease that expired in 1981. ASARCO's exploration program consisted of a systematic program of percussion and diamond core drilling, aimed at determining the ore reserves and the viability of conducting mining operations at the Site. First, ASARCO drilled 2 deep holes, to depths of 3,000 and 4,700 feet, respectively, to test its theory that a large porphyry-type copper deposit was present at the Site. In 1975, ASARCO drilled 396 shallow holes and 14 deep holes as part of this drilling program. ASARCO also conducted backhoe trenching as part of its exploration program to generally define the boundaries of outcrops and underground mineral deposits. It is estimated that approximately 31 tons of material was generated from ASARCO's drilling program, some or all of which is believed to have been removed from the Site for sampling and analysis.

10. ASARCO dug 49 trenches amounting to 15,213 linear feet, with an average depth of 6 feet. The procedure for sampling these trenches was to collect approximately ½ pound per linear foot of trench. This sampling effort would have amounted in 2.9 tons of waste material disturbed by ASARCO remaining on-site. The trenches were backfilled and revegetated in accordance with contemporary mining practices and Colorado Mined Land Reclamation Board requirements.

11. ASARCO also evaluated several adits, including the Copper Hill, Del Norte, Upper Highland Mary, Esmond, Science, Narrow Gauge, Aztec, Old Pickens, Chandler, Iowa and French adits. A total of 3,915 feet was cleared of ice and mapped and 2,110 feet of these adits was sampled and assayed by ASARCO. The adit rehabilitation program was abandoned, without ASARCO either retimbering or otherwise conducting any rehabilitation activities.

12. As of August 1976, ASARCO also abandoned its plan to dewater and rehabilitate the Missionary Shaft or its underworkings. ASARCO did not conduct any rehabilitation or mining activities at the Missionary Shaft or its associated underworkings.

13. Based on the data available to the Parties, EPA and Respondent estimate that the amount of material generated as a result of ASARCO's limited exploration activities amounts to approximately 31 tons or 25 yds.[3] EPA and ASARCO also agree that its limited diamond drilling program may have disturbed approximately 0.14 acre of the surface of the Site. EPA and ASARCO also agree that the actual amount of time ASARCO conducted its exploration activities lasted a total of approximately 16 months.

14. On July 1, 1987, Hydrometrics, Inc. became a wholly-owned subsidiary of ASARCO. As documented in ASARCO's CERCLA Section 104(e) information request response, Hydrometrics, Inc. performed certain testing, sampling and data compilation functions as a contractor or consultant to Galactic Resources, Ltd. or its wholly-owned subsidiaries, including Galactic Resources, Inc., Galactic Services, Inc. or Summitville Consolidated Mining Company, Inc. There is no indication, however, that any of Hydrometrics' activities resulted in the generation or disposal of any waste materials on-site.

15. The total volume of waste rock, tailings and other mine waste (including the Heap Leach Pad) requiring remediation at the Site is approximately 11 million yds.[3] According to the WT IROD, approximately 321,000 pounds of copper per year, if left untreated, would contaminate the receiving waters surrounding the Site, including the Wightman Fork and Alamosa River. EPA has determined parties are eligible for a *de minimis* settlement if their contribution of mine waste and metals loading is equal to or less than 3% of the total volume of hazardous substances contributed to each of these media. The Respondent's contribution of hazardous substances to these media are below the 3% *de minimis* cut-off established by EPA for the Site.

16. Based on Information currently known to the United States, EPA has calculated the Respondent's *de minimis* eligibility as follows: EPA has estimated that the amount of hazardous substances allegedly contributed to the Site by Respondents constitutes substantially less than 1% of the total volume of waste rock, tailings or mine waste requiring remediation at the Site. EPA has also determined that the Respondent's activities have not contributed any copper loading to the waters at or emanating from the Site.

17. The material allegedly generated and disposed of by the Respondent therefore involves only a minor portion of the total hazardous substances generated or disposed of at the Site. EPA has also concluded that the hazardous substances allegedly contributed to the Site by Respondent are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

18. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund will be $152 million. The payment required to be made by the Respondent pursuant to this Order represents only a minor portion of the response costs to be recovered for the cleanup of the Site.

V. Determinations

19. Based upon the Statement of Facts set forth above and on the Information currently known to the United States, EPA has determined that:

(1) The Site is a ''facility'' as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

(2) The Respondent is a ''person'' as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

(3) The Respondent is a ''potentially responsible party'' within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(4) There has been an actual or threatened ''release'' of a ''hazardous substance'' from the Site as those terms are defined in Sections 101 (22) and (14) of CERCLA, 42 U.S.C. 9601 (22) and (14).

(5) The amount of hazardous substances contributed to the Site by the Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

(6) As to the Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(7) The terms of this Consent Order are consistent with EPA policy and guidance for settlements with *de minimis* waste contributors, including but not limited to, ''Standardizing the *De Minimis* Premium,'' (July 7, 1995), ''Streamlined Approach for Settling with *De Minimis* Waste Contributors under CERCLA Section 122(g)(1)(A),'' OSWER Directive No. 9834.7–1D (July 30, 1993), and ''Methodology for Early *De Minimis* Waste Contributor Settlements under CERCLA Section 122(g)(1)(A),'' OSWER Directive No. 9834.7–1C (June 2, 1992).

(8) Prompt settlement with the Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(9) The settlement of this case without litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving any liability that the Respondent may have for response actions and response costs with respect to all releases or threatened releases at or in connection with the Site.

VI. Order

20. Based upon the Information currently known to the United States and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby Agreed to and ordered:

VII. Parties Bound

21. This Consent Order shall apply to and be binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate or other legal status of the Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

VIII. Payment

22. Within 10 days of the effective date of this Order, Respondents shall pay a total of $86,052.73 to the Hazardous Substance Superfund as provided below.

23. Payment shall be made by cashier's check made payable to ''EPA

Hazardous Substance Superfund.'' The check shall reference the Site name, the name and address of the Respondent, EPA CERCLA Number 08–Y3 and DOJ Case No. 90–11–3–1133A and shall be sent to: Mellon Bank, PA Region VIII, Attn: Superfund Accounting, P.O. Box 360859M, Pittsburgh, PA 15251.

24. If the Respondent fails to make full payment within the time required by Paragraph 22, Respondent shall pay Interest on the unpaid balance. In addition, if Respondent fails to make full payment as required by Paragraph 22, the United States may, in addition to any other available remedies or sanctions, bring an action against the Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(*l*) of CERCLA, 42 U.S.C. 9622(*l*), for failure to make timely payment.

25. The Respondent's payment includes an amount representing the Respondent's fair share of: (a) past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and (c) a premium to cover the risks associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Respondent's payment is based.

26. Payments made under this Section may be placed in a site-specific ''special'' or ''reimbursable'' account by EPA. This site-specific reimbursable account within the EPA Hazardous Substance Superfund shall be known as the Summitville Mine Superfund Site Special Account and shall be retained and used by EPA to conduct or finance the response actions at or in connection with the Site. Upon completion of the final remedial action for the Site, any balance remaining in the Summitville Mine Superfund Site Special Account shall be transferred by EPA to the general EPA Hazardous Substance Superfund.

IX. Certification of Respondents

27. By signing this Consent Order, the Respondent certifies, that, to the best of its knowledge and belief, it has:

(1) conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all non-privileged documents currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to its liability under CERCLA and RCRA for ownership, operation, exploration activities or control of the Site;

(2) not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential CERCLA and RCRA liability regarding the Site after notification of such potential liability; and

(3) fully complied to EPA's satisfaction with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e).

X. Covenants Not To Sue

28. a. Except as provided in Section XI (Reservation of Rights) of this Order, the United States covenants not to sue or take any other civil or administrative action against the Respondent for reimbursement of response costs or for injunctive relief pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon full payment of the amount specified in Section VII (Payment) of this Order.

b. The United States' covenant not to sue extends to Respondent, and to its predecessors-in-interest, affiliates, successors and assigns, including Hydrometrics, Inc., only to the extent that the liability of such predecessors-in-interest, affiliates, successors and assigns is derivative of Respondent's liability for those acts set forth in Paragraph 9–14, Section IV of this Order. The United States' covenant not to sue does not extend to any other person.

XI. Reservation of Rights

29. The covenants not to sue by the United States set forth in Paragraph 28 of this Order do not pertain to any matters other than those expressly specified in Paragraph 28. The United States reserves, and this Order is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to the following:

(a) claims based on a failure to make the payments required by Section VII (Payment) of this Order;

(b) criminal liability;

(c) any liability against Respondent that results from its future disposal activities at the Site; or

(d) liability for damages for injury to, destruction of, or loss of natural resources, including any cost of assessing the injury to, destruction of, or loss of such natural resources.

30. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against the Respondent seeking to compel Respondent to perform response actions at the Site and/or to reimburse the United States for additional costs of response if New Information is discovered that the Respondent contributed: (a) hazardous substances in an amount greater than 1% of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site; or (b) hazardous substances that contributed to the total copper loading to the waters at or emanating from the Site; or (c) hazardous substances at the Site which are significantly more toxic or are of significantly greater hazardous effect that other hazardous substances at the Site.

31. For purposes of Paragraph 30, ''New Information'' shall not include any recalculation of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States.

32. In the event the United States institutes judicial or administrative proceedings against the Respondent pursuant to Paragraph 30 above, the Respondent shall:

(i) be credited, in any subsequent settlement or administrative or judicial proceeding relating to the Site, with the $86,052.73 payment made pursuant to Paragraph 22 of this Order;

(ii) retain any defense it may have to liability and any claim it may have under any applicable statute or the common law with regard to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site; and

(iii) continue to grant any waiver or covenant previously granted to the United States under Section XI of this Order for the amount credited to the Respondent, but such waiver or covenant shall be null and void as to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site.

XII. Covenant Not To Sue By Respondent

33. The Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees

with respect to the Site or this Order, including, but not limited to:

(1) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through Sections 106(b)(2), 111, 112 or 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9611, 9612 or 9613;

(2) any claim arising out of response activities at the Site; and

(3) any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. 9607 or 9613, relating to the Site.

34. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR § 300.700(d).

35. The Respondent also waives any challenge it may have to any response action selected in any Action Memorandum, Interim Record of Decision or final Record of Decision for the Site.

XIII. Effect of Settlement; Contribution Protection

36. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Order may have under applicable law. The United States and the Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

37. Respondent consents and agrees to comply with and be bound by the terms of this Order. The United States and the Respondent agree that this Order, Respondent's consent to this Order and actions in accordance with this Order shall not in any way constitute or be construed as an admission of any liability by Respondents or of any legal or factual matters set forth in this Order. Further, neither this Order, Respondent's consent to this Order, nor Respondent's actions in accordance with this Order shall be admissible in evidence against Respondent without its consent, except in a proceeding to enforce this Order. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts and Determinations contained in this Consent Order.

38. With regard to claims for contribution against the Respondent, the Parties hereto agree that, as of the effective date this Order, the Respondent and its predecessors-in-interest, affiliates, successors and assigns, including Hydrometrics, Inc., is entitled to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5) for ''matters addressed'' in this Consent Order. ''Matters addressed'' by this Order shall include all claims the United States could bring or any other civil or administrative action the United States could take against the Respondent or its predecessors-in-interest, affiliates, successors and assigns, including Hydrometrics, Inc., for injunctive relief or for reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, related to the Site.

XIV. Public Comment

39. This Order shall be subject to a thirty-day public comment period in accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3), 42 U.S.C. 9622(i)(3), EPA may withdraw or modify its consent to this Order if comments received disclose any facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

XV. Attorney General Approval

40. The Attorney General or her designee has approved the settlement embodied in this Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4).

XVI. Effective Date

41. The effective date of this Order shall be the date upon which the Assistant Regional Administrator, EPA Region VIII notifies the Respondent that the public comment period undertaken pursuant to Paragraph 39 of this Order has closed and that comments received, if any, do not require EPA's withdrawal from or the modification of any terms of this Order.

It is so agreed:

ASARCO Incorporated

Dated: February 2, 1997.

Michael O. Varner,

Vice President, Environmental Operations.

It is so ordered and agreed:

Environmental Protection Agency, Region VIII.

Dated: September 2, 1997.

Martin Hestmark for Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

[FR Doc. 97–30822 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5926–9]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding Glacier Petroleum, Inc., Emporia, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Glacier Petroleum, Inc., Emporia, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1321(b)(6), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 26, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of, Glacier Petroleum, Inc. Emporia, Kansas; CWA Docket No. VII–97–W–0053.

The Complaint proposes a penalty of Thirty-five Thousand Nine Hundred Five Dollars ($35,905) for the discharge of crude oil into or upon the navigable waters of the United States or adjoining shorelines in violation of Section 311(b)(3) of the Clean Water Act.

DATES: In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact Venessa Cobbs, Regional Hearing Clerk at (913) 551–7630.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Glacier Petroleum, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: November 13, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–30815 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5926–8]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding OXY USA, Inc., Tulsa, OK

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding OXY USA, Inc., Tulsa, Oklahoma.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1321(b)(6), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 25, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of, OXY USA, Inc., Tulsa, Oklahoma; EPCRA Docket No. VII–97–W–0036.

The Complaint proposes a penalty of Twelve Thousand Dollars ($12,000) for the discharges of hazardous substances in violation of Section 311(b)(3) of the Clean Water Act.

DATES: In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by OXY USA, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: November 14, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–30817 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

November 18, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0802.

Expiration Date: 05/31/1998.

Title: Administration of the North American Numbering Plan, Order on Reconsideration, CC Docket No. 92–237 (Message Intercept Requirement).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1400 respondents; 9 hours per response (avg.); 12,600 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In response to concern expressed in the reconsideration record that LECs should develop intercept messages to inform dial-around customers that they need to dial additional digits, the *Order on Reconsideration* in CC Docket No. 92–237, titled, ''Administration of the North American Numbering Plan,'' requires that LECs offer a standard intercept message beginning on or before June 30, 1998, explaining that a dialing pattern change has occurred and instructing the caller to contact its IXC for further information. In developing an intercept message, LECs must consult with IXCs and reach agreement on the content of the message and on the period of time during which the message will be provided. The Commission leaves to resolution by the parties decisions about who should have the ultimate responsibility for determining the content of the intercept message and the period of time during which the message must be offered. The Commission states that it will resolve any disputes arising from parties' inability to reach agreement on such matters. Finally, the Commission

concludes that the determination of how best to cover the costs of providing the intercept message should be left to individual LECs, including whether their access customers should be charged a reasonable fee to cover those costs. The Commission has imposed these third party disclosure requirements to educate end users about their inability to reach carriers using five-digit access codes, and the need to dial seven-digit access codes instead. Compliance obligation is required.

OMB Control No.: 3060–0760.

Expiration Date: 05/31/1998.

Title: Access Charge Reform—CC Docket No. 96–262, First Report and Order; Second Order on Reconsideration and Memorandum Opinion and Order.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 14 respondents; 128,906 hours per response (avg.); 1,804,690 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $31,200.

Frequency of Response: On occasion and one-time.

Description: In the First Report and Order (Order), CC Docket No. 96–262, Access Charge Reform and the Second Order on Reconsideration and Memorandum Opinion and Order, the FCC adopts, that, consistent with principles of cost-causation and economic efficiency, non-traffic sensitive (NTS) costs associated with local switching should be recovered on an NTS basis, through flat-rated, per month charges. The information collections are as follows: a. *Showings Under the Market-Based Approach:* As competition develops in the market, the FCC will gradually relax and ultimately remove existing Part 69 federal access rate structure requirements and Part 61 price caps restrictions on rate level changes. Regulatory reform will take place in two phases. The first phase of regulatory reform will take place when an incumbent Local Exchange Carrier's (LEC) network has been opened to competition for interstate access services. The second phase of rate structure reforms will take place when an actual competitive presence has developed in the marketplace. Detariffing will take place when substantial competition has developed for the access charge elements. In our initial statement, we proposed that in order for LECs to meet this standard, they have to demonstrate that: (1) Unbundled network element prices are based on geographically deaveraged, forward-looking economic costs in a manner that reflects the way costs are incurred; (2) transport and termination charges are based on the additional cost of transporting and terminating another carrier's traffic; (3) wholesale prices for retail services are based on reasonably avoidable costs; (4) network elements and services are capable of being provisioned rapidly and consistent with a significant level of demand; (5) dialing parity is provided by the incumbent LEC to competitors; (6) number portability is provided by the incumbent LEC to competitors; (7) access to incumbent LEC rights-of-way is provided to competitors; and (8) open and non-discriminatory network standards and protocols are put into effect. We propose that the second phase of rate structure reforms would take place when an actual competitive presence has developed in the marketplace. LECs would have to show the following to indicate that actual competition has developed in the marketplace by: (1) Demonstrated presence of competition; (2) full implementation of competitively neutral universal service support mechanisms; and (3) credible and timely enforcement of pro-competitive rules. In the NPRM, we sought comment on four options for a prescriptive approach: reinitializing price cap indices (PCIs) to economic cost-based levels; reinitializing PCIs to levels targeted to yield no more than an 11.25 percent rate of return, or some other rate of return; adding a policy-based mechanism similar to the CPD to the X-Factor; or prescribing economic cost-based rates. We have decided above to rely primarily on a market-based approach, and impose prescriptive requirements only when market forces are inadequate to ensure just and reasonable rates for particular services or areas. We will determine the details of our market-based approach in a future Order. In that Order, we will also discuss in more detail what prescriptive requirements we will use as a backstop to our market-based access charge reform. Because we are not adopting the prescriptive approach at this time, we are removing the collections associated with the prescriptive approach from our statement. If the collections are adopted at a later date, we will request that OMB reinstates them at that time. (No. of respondents: 13; hour burden per respondent: 137,986 hours; total annual burden: 1,793,818). b. *Cost Study of Local Switching Costs:* The FCC does not establish a fixed percentage of local switching costs that incumbent LECs must reassign to the Common Line basket or newly created Trunk Cards and Ports service category as NTS costs. In light of the widely varying estimates in the record, we conclude that the portion of costs that is NTS costs likely varies among LEC switches. Accordingly, we require each price cap LEC to conduct a cost study to determine the geographically-averaged portion of local switching costs that is attributable to the line-side ports, as defined above, and to dedicated trunk side cards and ports. These amounts, including cost support, should be reflected in the access charge elements filed in the LEC's access tariff effective January 1, 1998. (No. of respondents: 13; hours per respondent: 400; total annual burden: 5200 hours). c. *Cost Study of Interstate Access Service That Remain Subject to Price Cap Regulation:* The 1996 Act has created an unprecedented opportunity for competition to develop in local telephone markets. We recognize, however, that competition is unlikely to develop at the same rate in different locations, and that some services will be subject to increasing competition more rapidly than others. We also recognize, however, that there will be areas and services for which competition may not develop. We will adopt a prescriptive ''backstop'' to our market-based approach that will serve to ensure that all interstate access customers receive the benefits of more efficient prices, even in those places and for those services where competition does not develop quickly. To implement our backstop to market-based access charge reform, we require each incumbent price cap LEC to file a cost study no later than February 8, 2001, demonstrating the cost of providing those interstate access services that remain subject to price cap regulation because they do not face substantial competition. (No. of respondents: 13; hours per respondent: 8; total annual burden: 104 hours). d. *Tariff Filings:* In the *First Report and Order,* the Commission requires the filing of various tariffs, with modifications. For example, the FCC directs incumbent LECs to establish separate rate elements for the multiplexing equipment on each side of the tandem switch. LECs must establish a flat-rated charge for the multiplexers on the SWC side of the tandem, imposed pro-rata on the purchasers of the dedicated trunks on the SWC side of the tandem. Multiplexing equipment on the EO side of the tandem shall be charged to users of common EO-to-tandem transport on a per-minute-of-use basis. These multiplexer rate elements must be included in the LEC access tariff filings to be effective January 1, 1998. In the

Second Order on Reconsideration, the FCC clarifies that the TIC exemption for access customers using competitive transport providers only applies to that portion of the residual per-minute TIC that is related to transport facilities, and directs incumbent local exchange carriers to include, in their access tariff filing, the amount of per-minute transport interconnection charge (TIC) they anticipate will be allocated to facilities-based rate elements in the future. (No. of respondents: 13; hours per respondent: 256 hours; total annual burden: 3328 hours). e. *Third-Party Disclosure:* In the *Second Order on Reconsideration,* the Commission requires LECs to provide IXCs with customer-specific information about how many and what type of presubscribed interexchange carrier charges (PICCs) they are assessing for each of the IXC's presubscribed customers. One of the primary goals of our *First Report and Order* was to develop a cost-recovery mechanism that permits carriers to recover their costs in a manner that reflects the way in which those costs are incurred. Without access to information that indicates whether the LEC is assessing a primary or non-primary residential PICC, or about how many local business lines are presubscribed to a particular IXC, the IXC will be unable to develop rates that accurately reflect the underlying costs. (No. of respondents: 14; hours per respondent: 160 hours; total annual burden: 2240 hours). Our authority to collect this information is provided under 47 U.S.C. 201–205 and 303(r). The information collected under these Orders would be submitted to the FCC by incumbent LECs for use in determining whether the incumbent LECs should receive the regulatory relief proposed in the Orders. The information collected under the Second Order on Reconsideration and Memorandum Opinion and Order would be submitted by the LECs to the interexchange carriers (IXCs) for use in developing the most cost-efficient rates and rate structures. Obligation to respond: mandatory.

OMB Control No.: 3060–0787.

Expiration Date: 10/31/2000.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 4275 respondents; 2.34 hours per response (avg.); 10,044 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' The section further provides that any telecommunications carrier that violates the Commission's verification procedures and that collects charges for telecommunications service from a subscriber must pay to the carrier previously selected by the subscriber an amount equal to all charges paid by the subscriber after the violation occurred. The Commission's current rules pertaining to changes in subscriber carrier selections are contained in Sections 64.1100 and 64.1150 of the Commission's rules, 47 CFR §§ 64.1100, 64.1150. These rules apply only to interexchange carriers (IXCs). Section 64.1100 requires that IXCs verify orders for long distance service generated by telemarketing, and Section 64.1150 prescribes the proper content and form for letters of agency (or, written authorization of subscriber carrier changes). The proposed modifications and additions to the rules are necessary to accommodate the Commission's expanded scope of authority to require all telecommunication carriers to verify change orders for telephone exchange and telephone toll service, and to provide that unauthorized carriers forfeit to the subscriber's authorized carrier, all charges collected as a result of their unlawful action. (Burden estimate for proposed Section 64.1100 is as follows: No. of respondents: 675; hours per respondent: 1.25; total annual burden: 844. Burden estimate for proposed 64.1150 is as follows: No. of respondents: 1800; hours per respondent: 2 hours; total annual burden: 3600 hours). Proposed Section 47 CFR § 64.1160 mirrors Section 258 of the 1996 Act by providing that no telecommunications carrier shall submit or execute a carrier change except in accordance with the Commission's verification procedures, and that a carrier that violates the verification procedures shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by the subscriber after the violation occurs. Under proposed Section 47 CFR Section 64.1170, a subscriber's properly authorized carrier must, within 10 days of receiving notification that the subscriber's carrier selection was changed without authorization, request from the unauthorized carrier the amount of charges paid by the subscriber to the unauthorized carrier, and the value of any premiums to which the subscriber would have been entitled had the subscriber's carrier selection not been changed. Upon notification that the subscriber's carrier selection was changed without authorization, the unauthorized carrier must remit these amounts to the subscriber's properly authorized carrier. The subscriber's properly authorized carrier must, upon receiving the value of lost premiums from the unauthorized carrier, restore any lost premiums (or an equivalent premium or dollar amount where the premium cannot be restored) to the subscriber. This section also provides that carriers disputing liability under this section must pursue private settlement negotiations prior to petitioning the Commission to resolve any dispute regarding the transfer of charges and the value of lost premiums from the unauthorized carrier to the properly authorized carrier. (No. of respondents: 1800; hours per respondent: 3 hours; total annual burden: 5400 hours). The information will be used to promulgate regulations to implement Section 258 of the Telecommunications Act of 1996, and to determine what additional measures should be taken to deter unauthorized switching of subscriber's carrier selections in light of the Act's new provisions. Specifically, we are proposing to expand the scope of our current verification rules to be applicable to all telecommunications carriers. Also, new proposed Sections 64.1160 and 64.1170 are intended to ensure that carriers that violate our verification rules do not retain any revenue gained from their unlawful activity, and that subscribers receive prompt and full reparation for harm suffered as a consequence of unauthorized carrier changes. We also seek comment on whether the verification rules should apply when carriers solicit preferred carrier freezes; whether the ''welcome package'' described in Section 64.1100(d) continues to be a necessary and viable verification alternative; whether we should exempt in-bound (or customer-initiated) calls from the verification rules; what the liability among carriers and subscribers should be; and whether to establish a ''bright-line'' evidentiary standard for determining whether a subscriber has relied on a resale carrier's identity of its underlying facilities-based

network provider, hence requiring that the resale carrier notify the subscriber if the underlying network provider is changed.

OMB Control No.: 3060–0106.

Expiration Date: 10/31/2000.

Title: Reports of Overseas Telecommunications Traffic—Section 43.61.

Form No.: FCC 43–61.

Respondents: Business or other for-profit.

Estimated Annual Burden: 248 respondents; 30.45 hours per response (avg); 7,554 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $96,000.

Frequency of Response: Annually, semi-annually.

Description: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities. In addition to the annual filing requirement, private line resellers must report their U.S. outbound and inbound traffic originating or terminating over resold U.S. private lines on a semi-annual basis. This requirement applies for three years following a Commission finding that a particular country offers U.S. carriers ''equivalent'' opportunities for resale. The information is collected so that the Commission can closely monitor the equivalency decision's impact on the amount of IMTS traffic diverted from the settlements process. Sections 211, 214, 218, 219, 220 and 403 of the Communications Act of 1934, as amended, accord the Commission broad authority to obtain information from common carriers. Part 43 of the Commission's rules establishes the procedures for filing periodic reports and certain other information, including annual traffic and revenue reports. Obligation to respond: mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30798 Filed 11–21–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1190–DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–1190–DR), dated November 1, 1997, and related determinations.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 1, 1997:

Dodge County for Categories A and B under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–30807 Filed 11–21–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89–777 (46 U.S.C. § 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178–2193

Vessel: Tropicale

Fred. Olsen Travel Limited, Fred. Olsen Cruise Lines, Ltd., Fred. Olsen & Co., Fred. Olsen Shipping A/S and Fred. Olsen Shipping II A/S, White House Road, Ipswich, Suffolk IPI 5LL, United Kingdom

Vessel: Black Watch

Hapag-Lloyd Tours GmbH, Hapag-Lloyd Cruiseship Management GmbH, Hapag-Lloyd (Bahamas) Ltd. and Conti 1. Kreuzfahrt GmbH & Co. KG MS ''Columbus'', Ballindamm 25, D–20095, Hamburg, Germany

Vessel: c. Columbus

Holland America Line-Westours Inc., (d/b/a/ Holland America Line), Holland America Line N.V. and HAL Nederland N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: Rotterdam

Ivaran Agencies, Inc. and Ivarans Rederi ASA, Newport Financial Center, 111 Pavonia Avenue, Jersey City, N.J. 07310–1755

Vessel: Americana

Norwegian Cruise Line Limited and, Norwegian Majesty Ltd., 7665 Corporate Center Drive, Miami, Florida 33126

Vessel: Norwegian Majesty

Norwegian Cruise Line Limited, 7665 Corporate Center Drive, Miami, Florida 33126

Vessel: Norwegian Sea

Dated: November 18, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–30757 Filed 11–21–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Fred. Olsen Travel Limited, Fred. Olsen Cruise Lines Ltd., and Fred. Olsen & Co., White House Road, Ipswich, Suffolk IP1 5LL, United Kingdom

Vessel: Black Watch

Hapag-Lloyd Tours GmbH and Hapag-Lloyd Cruiseship Management GmbH, Ballindamm 25, D–20095 Hamburg, Germany
Vessel: c. Columbus

Holland America Line-Westours Inc. (d/b/a Holland America Line) and Holland America Line N.V., 300 Elliott Avenue, Seattle, Washington 98119
Vessel: Rotterdam

Ivaran Agencies, Inc. and Ivarans Rederi ASA, Newport Financial Center, 111 Pavonia Avenue, Jersey City, N.J. 07310–1755
Vessel: Americana

New SeaEscape Cruises, Inc., Cruise Charter Ltd. and Maritime Management Ltd., 140 South Federal Highway, Dania, Florida 33004
Vessel: Island Holiday

Norwegian Cruise Line Limited, 7665 Corporate Center Drive, Miami, Florida 33126
Vessels: Norwegian Majesty and Norwegian Sea

Princess Cruises, Inc., Princess Cruises Liberia, Inc. and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, California 90067
Vessel: Sea Princess

Riverbarge Excursion Lines, Inc., 201 Opelousas Avenue, New Orleans, Louisiana 70114
Vessel: River Explorer

Dated: November 18, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–30758 Filed 11–21–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. David D. Dallas, Liberty Corner, New Jersey, and Robert J. Van Volkenburgh, Jr., Somerville, New Jersey; to acquire voting shares of Unity Bancorp Inc., Clinton, New Jersey, and thereby indirectly acquire First Community Bank, Clinton, New Jersey.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Norman Lane Nelson, Dunlap, Illinois, and Louise Kay Kanive, Washington, Illinois; to acquire voting shares of First Lacon Corp., Lacon, Illinois, and thereby indirectly acquire First National Bank of Lacon, Lacon, Illinois.

2. John Ryburn Stipe, Forrest City, Arkansas; to acquire additional voting shares of Forrest City Financial Corporation, Forrest City, Arkansas, and thereby indirectly acquire Forrest City Bank, N.A., Forrest City, Arkansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Michael Stevens Helfer, Washington, D.C.; to acquire voting shares of First Community Bancshares, Inc., Houston, Texas, and thereby indirectly acquire FCBI Delaware, Wilmington, Delaware; Fort Hood National Bank, Fort Hood, Texas; First National Bank, Killeen, Texas. Texas.

Board of Governors of the Federal Reserve System, November 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30836 Filed 11–21–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Brookline Bancorp, M.H.C., and Brookline Bancorp, Inc., both of Brookline, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Brookline Savings Bank, Brookline, Massachusetts.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorporation Inc., St. Louis, Missouri; to merge with Horizon Bancorp, Inc., Arkadelphia, Arkansas, and thereby indirectly acquire Horizon Bank, Malvern, Arkansas.

In connection with this application, Applicant also has applied to acquire Horizon Financial Services, Inc., Arkadelphia, Arkansas, and thereby indirectly engage in full service securities brokerage activities, pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

2. J.R. Montgomery Bancorporation, Lawton, Oklahoma; to acquire an additional 6.6 percent, for a total of 37.33 percent, of the voting shares of Fort Sill National Bank, Fort Sill, Oklahoma.

Board of Governors of the Federal Reserve System, November 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30835 Filed 11–21–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 9, 1997.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First Security Corporation, Salt Lake City, Utah; to engage *de novo* through its subsidiary, First Security Capital Markets, Salt Lake City, Utah, in underwriting and dealing in certain bank-ineligible securities. *See Citicorp, et al.*, 73 Fed. Res. Bull. 473 (1987); *Chemical New York Corporation, et al.*, 73 Fed. Res. Bull. 731 (1987); *Bank South Corporation*, 81 Fed. Res. Bull. 1116; *BOK Financial Corporation*, 83 Fed. Res. Bull. 510 (1997). First Security Corporation also plans to engage in the following activities: (1) acting as agent in the private placement of all types of securities; (2) buying and selling all types of securities on the order of customers as riskless principal; (3) providing full-service securities brokerage and investment advisory services in combination; (4) acting as investment and financial adviser; (5) making, acquiring, and servicing loans; (6) leasing property, engaging as principal in investing and trading activities; and (7) engaging in futures, forward, and option contracts for hedging purposes; pursuant to §§ 225.28(b)(1) - (3),(6),(7), and (8).

Board of Governors of the Federal Reserve System, November 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30837 Filed 11–21–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Planning and Evaluation; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Planning and Evaluation, with authority to redelegate, all the authorities under Sections 403(a)(5)(G), (H), and (I) of the Social Security Act, as amended, 42 U.S.C. Section 603(a)(5)G), (H), and (I).

These delegations shall be exercised under the Department's existing delegation of authority and policy on regulations. In addition, I hereby affirm and ratify any actions taken by you or your subordinates that involved the exercise of the authorities delegated herein prior to the effective date of the delegation. This delegation is effective immediately.

Dated: November 12, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–30793 Filed 11–21–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Temporary Assistance to Needy Families, Medicaid, Aid to Needy Aged, Blind, or Disabled Persons and for the New Children's Health Insurance Programs for October 1, 1998 Through September 30, 1999

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Federal Medical Assistance Percentage and Enhanced Federal Medical Assistance Percentages for Fiscal Year 1999 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 1998 through September 30, 1999. This notice announces the calculated ''Federal Medical Assistance Percentages'' and ''Enhanced Federal Medical Assistance Percentages'' that we will use in determining the amount of Federal matching in State medical and medical insurance expenditures and for the annual reconciliation of contingency funds under Title IV–A. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (AABD) operates only in Puerto Rico. Programs under title XXI are new, beginning in 1998. The percentages in this notice apply to State expenditures for assistance payments, medical services and medical insurance services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1905(b) and 2105(b) of the Act, as revised by section 9528 of Pub. L. 99–272, require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1905(b) and 2105(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The ''Federal percentages,'' for residual payments under the old Aid to Families with Dependent Children (AFDC) program, will no longer be published. Anyone who needs these values may call the contact person named below and receive them. If a sufficient number of persons call, we may publish them again beginning in 2000.

The ''Federal medical assistance percentages'' are for Medicaid. States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraph (2) of sections 3(a), 1003(a), and 1403(a) of the Act. They will also be used for the annual reconciliation of any Contingency funds received under the Temporary Assistance for Needy Families program.

The ''Enhanced Federal Medical Assistance Percentages'' are for use in the new Children's Health Insurance Program under Title XXI, and for some or all of children's medical assistance under the new Medicaid sections 1905(u)(2) and 1905(u)(3).

DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1998 and ending September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Moyer, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Telephone (202) 690–7861.

(Catalog of Federal Domestic Assistance Program Nos. 93.560—Assistance Payments—Maintenance Assistance (State Aid); 93.778—Medical Assistance Program; Children's Health Insurance Programs—not yet added)

Dated: November 17, 1997.

Donna E. Shalala,

Secretary of Health and Human Services.

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1998–SEPTEMBER 30, 1996

[Fiscal year 1999]

State	Federal Medical Assistance percentages	Enhanced Federal Medical Assistance percentages
Alabama	69.27	78.49
Alaska	59.80	**71.86
American Samoa	50.00	*65.00
Arizona	65.50	75.85
Arkansas	72.96	81.07
California	51.55	66.09
Colorado	50.59	65.42
Connecticut	50.00	65.00
Delaware	50.00	65.00
District of Columbia	70.00	79.00
Florida	55.82	69.07
Georgia	60.47	72.33
Guam	50.00	*65.00
Hawaii	50.00	65.00
Idaho	69.85	78.89
Illinois	50.00	65.00
Indiana	61.01	72.71
Iowa	63.32	74.32
Kansas	60.05	72.03
Kentucky	70.53	79.37
Louisiana	70.37	79.26
Maine	66.40	76.48
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	52.72	66.91
Minnesota	51.50	66.05
Mississippi	76.78	83.75
Missouri	60.24	72.17
Montana	71.73	80.21
Nebraska	61.46	73.02
Nevada	50.00	65.00
New Hampshire	50.00	65.00
New Jersey	50.00	65.00
New Mexico	72.98	81.09
New York	50.00	65.00
North Carolina	63.07	74.15
North Dakota	69.94	78.96
Northern Mariana Islands	50.00	*65.00
Ohio	58.26	70.78
Oklahoma	70.84	79.59
Oregon	60.55	72.38
Pennsylvania	53.77	67.64
Puerto Rico	50.00	*65.00
Rhode Island	54.05	67.83
South Carolina	69.85	78.89
South Dakota	68.16	77.71
Tennessee	63.09	74.16
Texas	62.45	73.72
Utah	71.78	80.25
Vermont	61.97	73.38
Virgin Islands	50.00	*65.00
Virginia	51.60	66.12
Washington	52.50	66.75
West Virginia	74.47	82.13
Wisconsin	58.85	71.20

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1998–SEPTEMBER 30, 1996—Continued

[Fiscal year 1999]

State	Federal Medical Assistance percentages	Enhanced Federal Medical Assistance percentages
Wyoming	64.08	74.86

*For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centrum.

**For 1998, 1999, and 2000, the values in the table were set for state plans under Titles XIX and XXI and for capitation payments and DSH allotments under those titles. For other purposes, the percentage for Alaska is 52.26

[FR Doc. 97–30832 Filed 11–21–97; 8:45 am]
BILLING CODE 4110–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Vaccine Program Office of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Adult Immunization Workshop.

Times and Dates: 12:30 p.m.–5 p.m., December 1, 1997; 8:30 a.m.–4:30 p.m., December 2, 1997.

Place: The Grand Hyatt Washington, 1000 H Street NW, Washington, DC 20001, telephone 202/582–1234.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to gather information on adult immunization practices at non-traditional sites and explore opportunities to increase immunization rates by offering immunizations to adults who are unlikely to be immunized at traditional sites.

Matters to be Discussed: Agenda items will include a presentation of the Adult Immunization Plan; presentations on current immunization activities at various non-traditional sites; discussions by representatives of community organizations on methods to increase immunization levels in various segments of the adult population; and a discussion on the possibility of expanding the types of non-traditional sites utilized.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Alicia S. Postema, Program Analyst, National Vaccine Program Office, CDC, 1600 Clifton Road, NE, M/S A–11, Atlanta, Georgia 30333, telephone 404/639–4450.

Dated: November 18, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30766 Filed 11–21–97; 8:45 am]
BILLING CODE 4163–18–P

HEALTH RESOURCES AND SERVICES ADMINISTRATION

Program Announcement for a Cooperative Agreement for the Development and Enhancement of Health Promotion and Disease Prevention Curriculum Components Within Health Professions Education

The Health Resources and Services Administration (HRSA) announces the awarding of a single source cooperative agreement to the Association of Teachers of Preventive Medicine (ATPM) to plan for the development and enhancement of Health Promotion and Disease Prevention (HP/DP) curriculum components within health professions education. This activity will be supported under the authority of Title III, Section 301, of the Public Health Service Act. Five years of support are proposed beginning in fiscal year 1997. An initial award of $262,301 will be used for the development of vaccine benefit-risk curriculum for health care professionals.

The project will: (1) Enhance the integration of HP/DP within existing health professions primary care curriculum; (2) identify and develop standards, guidelines, competencies, and training models that address HP/DP curricula; (3) serve as a resource for professional organizations, specialty societies, and academic units in developing a program of education and training in preventive medicine; and (4) explore project ideas regarding the instruction, practice and research in preventive medicine which respond to the national objectives of *Healthy People 2000*. The ATPM was chosen because it is the only professional organization solely committed to advancing the teaching of HP/DP in the clinical specialities. It has an established membership of professionals which include teachers, researchers, practitioners, and administrators of multiple disciplines and medical specialities located in schools of medicine, academic health centers, schools of public health, accredited graduate medical education programs, nursing schools and various practice settings. It is uniquely structured to access current HP/DP instruction for health professionals of multiple disciplines and to influence the development of essential information as required. The Association also has developed and provided access to preventive medicine teaching and curriculum materials for both pre-service health professions education and continuing education. Many of these materials are proprietary in nature.

Federal Involvement

The Cooperative Agreement mechanism is being used for this project to allow for substantial Federal programmatic involvement with the planning, development, administration, and evaluation of the proposed projects.

Requests for Additional Information

Requests for additional information regarding this sole source cooperative agreement should be directed to: D.W. Chen, M.D., MPH, Bureau of Health Professions, Room 8–101, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6853, FAX: (301) 443–1164, Email: dwchen@hrsa.dhhs.gov.

Requests for additional information for the initial project concerning vaccine benefit-risk curriculum development should be directed to: Pamela A. Eason, M.P.A., Bureau of Health Professions, Room 8A–35, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857, Telephone:

(301) 443–3474, FAX: (301) 443–3354, e-mail: peason@hrsa.dhhs.gov.

Dated: November 14, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–30782 Filed 11–21–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Special Factors for Grants for Residency Training and Advanced Education in the General Practice of Dentistry Programs for Fiscal Year 1998

Grants for Residency Training and Advanced Education in the General Practice of Dentistry Programs are authorized under section 749, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992.

Proposed Special Factors

The following Special Factors are proposed:

Special Factors

In determining the funding of approved applications, the Secretary will consider the following Special Factors:

Community linkages—This special factor may be addressed by the establishment of academic-community linkages, in particular linkages between the training program and underserved populations or communities. Documentation of such linkages should include verification that at least 20% of residents' training time occurs in one or more underserved settings. Memoranda of agreement and letters of support from the community settings involved should be included in the appropriate appendix of the application.

Establishment of new PGY–1 training positions—To address the recommendations of expert panels such as the Institute of Medicine and Pew Commission on Health that a year of post-doctoral training be available for all dental graduates, and that the majority of these positions be in general dentistry programs, this special factor may be addressed by the establishment of new postgraduate year-one (PGY–1) training positions, either through the establishment of a new program or the expansion of an existing program. An increase in the number of PGY–2 positions does not address the intent of this special factor.

Innovative training methods—Examples of ways in which applicants address this special factor might include new sponsor/co-sponsor arrangements; different organizational and administrative structures; expanded private/public sector affiliations and setting linkages; and creative applications for current instructional telecommunications and computer technologies.

Peer reviewers will take into consideration the extent to which proposals address these Special Factors and adjust their individual technical review scores accordingly.

An announcement will be made in the *HRSA Preview* for grant programs which will conduct competitive cycles in FY 1998.

The comment period is 30 days. All comments received on or before December 24, 1997 will be considered before the final review criteria are established. Written comments should be addressed to: Bernice Parlak, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6853; FAX: (301) 443–1164.

All comments received will be available for public inspection and copying at the Division of Associated, Dental and Public Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: November 14, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–30781 Filed 11–21–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4210–N–03]

Housing Opportunities for Persons With AIDS Program; Announcement of Funding Awards—Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal year 1997 Housing Opportunities for Persons with AIDS (NOPWA) program. The notice contains the names of award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: David Vos, Acting Director, Office of HIV/AIDS Housing, Department of Housing and Urban Development, Room 7154, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1934. the TTY number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers). Information on HOPWA, community development and consolidated planning, and other HUD programs may also be obtained from the Community Connections information center at 1–800–998–999 (voice) or 1–800–483–2209 (TTY); by email at amcom@aspensys.com; or by internet at gopher://amcom.aspensys.com. The HUD Home Page address on the World Wide Web is http://www.hud.gov.

SUPPLEMENTARY INFORMATION: The purpose of the competition was to award grants for housing assistance and supportive services by three types of projects: (1) Grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of low-income persons living with HIV/AIDS and their families, including at least one grant for National HOPWA Technical Assistance; (2) grants for projects under the HIV Multiple-diagnoses Initiative (MDI) which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of low-income persons living with HIV/AIDS and their families who are also homeless and have chronic alcohol and/or other drug abuse problems and/or serious mental illness; and (3) grants for projects which are part of long-term comprehensive strategies for providing housing and related to services for low-income persons living with HIV/AIDS and their families in areas that do not receive HOPWA formula allocations, including additional funds for the evaluation of MDI grant selected under the 1996 competition.

The HOPWA assistance made available in this announcement is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and was appropriated by the Department's appropriation, The ''Department of Veterans Affairs and

Housing and Urban Development, and Independent Agencies Appropriation Act, 1997'' (Pub. L. 102–204, approved September 26, 1996). The competition was announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on May 7, 1997 (62 FR 25082). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.241.

A total of $19,600,000 was awarded for 27 applications. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A.

Dated: November 17, 1997.

Jacquie Lawing,

Acting Assistant Secretary for Community Planning and Development.

Appendix A—FY 1997 HOPWA Competitive Grants

Chart 1. Awards for Projects That Are Part of Long Term comprehensive Strategies (Non-Formula Areas)

Alaska Housing Finance Corporation, Anchorage, Alaska, $572,800
New Mexico Mortgage Finance Authority, Albuquerque and Gallup, New Mexico, $1,100,000
Rhode Island Housing and Mortgage Finance Corporation, Providence, Cumberland and Cranston, Rhode Island, $1,097,030
Wyoming Department of Health, Casper, Wyoming, $288,640
Pima County Community services, Tucson, Arizona, $639,196

Chart 2. Awards for Special Projects of National Significane

The AIDS Project, Portland, Maine, $1,064,194
AIDS Housing Corporation, Boston, Massachusetts for the New England region, $749,689
San Diego County, Department of Housing and Community Development, San Diego, San Marcos and Vista, California, $1,053,800
North Carolina Department of Environment, Health and Natural Resources, Charlotte, Raleigh, Greenville, Wilmington, and eastern rural NC, $785,714
Kentucky Housing Corporation, Louisville, Lexington, Dayton and Covington, Kentucky, $901,323
Ho'omana'olana, Honolulu, Hawaii, $1,028,797
Hudson Planning Group, Inc., New York City, $334,750

Chart 3. Award for National HOPWA Technical Assistance—SPNS

AIDS Housing of Washington, Seattle, Washington for nation-wide activities, $1,030,000

Chart 4. Awards for the HIV Multiple-Diagnoses Initiative

City of Bridgeport, Bridgeport, Connecticut, $1,270,000
Church Avenue Merchants Block Association (CAMBA), Brooklyn, New York City, $1,199,901
AIDS Task Force of Alabama, Inc., Birmingham, Alabama, $1,270,000
The Salvation Army, Harbor Light Multi-Service Center, Minneapolis, Minnesota, $1,200,000
Catholic Community Services, Hudson County Division, Jersey City, New Jersey, $1,236,922
Local Health Council of East Central Florida, Inc., Orlando, Florida, $1,205,903
Center for Children & Families, Manhattan, New York City, $1,221,450

Chart 5. Additional Pat III Funds for Evaluation of 1996 HIV Multiple-Diagnoses Initiative Projects

Bernal Heights Housing Corporation, San Francisco, California, $50,000
Housing Authority of Santa Cruz, Santa Cruz Co., California, $50,000
Housing & Services Inc. (of South Florida), Miami, Florida, $50,000
Baltimore Department of Housing and Community Development, Baltimore, Maryland, $50,000
Catholic Community Services, Jersey City, New Jersey, $49,936
United Bronx Parents, Inc., New York City, $50,000
Houston Regional HIV/AIDS Resource Group, Inc., Houston, Texas, $50,000
Total for all 27 grants: $19,600,000

[FR Doc. 97–30612 Filed 11–21–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on December 10 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission for funding approval. The meeting is open to the public.

DATES: December 10, 1997, 9:00 A.M.

ADDRESSES: The meeting will be held at the Tensas River National Wildlife Refuge, Route 2, Box 295, Tallulah, Louisiana, (318) 574–2664. The North American Wetlands Conservation Council Coordinator is located at the Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Room 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the North American Wetlands Conservation Council is a Federal-State-private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State, Federal, and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: November 14, 1997.

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–30802 Filed 11–21–97; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1430–01, COC–60372, COC–60883, and COC–60911]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands in Boulder County, CO.

SUMMARY: The following described land has been examined and found suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value:

COC–60372

T. 1 N., R. 71 W., Section 6: portion of Mineral Survey (M.S.) 18390, comprising approximately 0.04 acres.

COC–60883

T. 1 N., R. 71 W., Section 19: parcel of public land bordered by M.S. 15086, the Katherine H. and M.S. 12927, the Charter Oak, comprising approximately 0.1 acres.

COC–60911

T. 1 N., R. 72 W., Section 7: portion of lot 59, comprising approximately 0.4 acres.

The land in parcel COC–60372 will be offered to Steven Strand. The land in parcel COC–60883 will be offered to Ron Brotzman, agent for Old Republic National Title Insurance Company. The land in parcel COC–60011 will be offered to Richard Marchese. These sales will be made to resolve inadvertent trespass situations. This determination amends the segregation of February 10, 1995 to allow for sale under Section 203 of the Federal Land Policy and Management Act of 1976. Lot designations and exact acreages will be determined before sale. Minerals will be included if determined appropriate. Detailed information concerning these sales, including price, patent reservations, etc. will be available upon request.

Any parcels not purchased when initially offered, will be offered competitively to the public through sealed bids on the next scheduled sale day.

DATES: Interested parties may submit comments to the District Manager at the above address until January 15, 1998.

ADDRESSES: Bureau of Land Management, Canon City District, 3170 E. Main St. Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Jan Fackrell, Realty Specialist, (719) 269–8525.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, and he may vacate, modify, or continue this realty action.

Donnie R. Sparks,

District Manager.

[FR Doc. 97–30714 Filed 11–21–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Draft Environmental Impact Statement on the General Management Plan for Little River Canyon National Preserve, Alabama

SUMMARY: The National Park Service will prepare an Environmental Impact Statement (EIS) to accompany its General Management Plan (GMP) for Little River Canyon National Preserve. The Service invites suggestions for issues to be considered and ideas for resolving the issues.

DATES: Scoping suggestions should be submitted on or before January 1, 1998 to ensure adequate consideration by the Service.

ADDRESSES: Superintendent, Little River Canyon National Preserve, P.O. Box 45, Fort Payne, Alabama 35967, Telephone: (205) 997–9239.

SUPPLEMENTARY INFORMATION: In 1995, the National Park Service began the preparation of an Environmental Assessment (EA) on the GMP.

This included scoping for the EA. The National Park Service has announced that an EIS on GMPs will be prepared for all park units. To comply with this policy, a formal scoping period is announced.

Comments are invited on any issue believed to be relevant to Preserve management and should be submitted to the Superintendent whose address is given above. No public scoping meeting will be held. We urge that comments be made in writing. Issues may be suggested for the Service to consider during its planning as well as suggestions for resolution. Issues currently being considered include the preservation of water quality and quantity, the preservation and management of the Preserve's natural features and cultural resources, identification of resource compatible recreational pursuits, and infrastructure needs. Central to these issues is the determination of the Preserve's mission—its purpose and significance. The plan will identify desired conditions for resources and visitor experiences for various management units within the Preserve. A draft GMP/EIS will be prepared and presented to the public for review and comment followed by preparation and availability of the final GMP/EIS.

Dated: November 5, 1997.

Daniel W. Brown,

Regional Director, Southeast Region.

[FR Doc. 97–30800 Filed 11–21–97; 8:45 am]

BILLING CODE 4310–70–M

NATIONAL PARK SERVICE

Tallgrass Prairie National Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the first meeting of the Tallgrass Prairie National Preserve Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES, TIME, AND ADDRESS: Wednesday, December 10, 1997; 8 a.m. until business and public comment are complete; St. Anthony's Hall, 6th and Elm Street, Strong City, Kansas.

This business meeting is open to the public. Space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. An agenda will be available from the Superintendent 1 week prior to the meeting. Attendees are encouraged to participate in these meetings. If you would like to address the committee, please contact the Superintendent by December 1, 1997, at the address or telephone number listed below requesting that your name be added to the agenda. Depending on the number of requests, the Superintendent has the right to limit the amount of time each participant is allowed to address this committee.

FOR FURTHER INFORMATION CONTACT: Steve Miller, Superintendent, Tallgrass Prairie National Preserve, P.O. Box 585, Cottonwood Falls, Kansas 66845; or telephone him at 316–273–6034.

SUPPLEMENTARY INFORMATION: The Tallgrass Prairie National Preserve was established by Public Law 104–333, dated November 12, 1996.

Dated: November 14, 1997.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 97–30801 Filed 11–21–97; 8:45 am]

BILLING CODE 4310–70–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The Criminal Rules public hearing scheduled to be held in New Orleans, Louisiana, on December 12, 1997, has been canceled. (Original notice of hearing appeared in the **Federal Register** of August 25, 1997.)

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: November 18, 1997.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 97–30767 Filed 11–21–97; 8:45 am]

BILLING CODE 2210–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATE: January 8–9, 1998.

TIME: 8:30 a.m.–5:00 p.m.

ADDRESS: Fess Parker's Double Tree Hotel, 633 East Cabrillo Boulevard, Santa Barbara, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: November 18, 1997.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 97–30768 Filed 11–21–97; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Office of Justice Programs; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

ACTION: Notice of information collection under review; a 1-minute survey on curfews.

The Department of Justice, Office of Juvenile Justice and Delinquency Prevention previously published this notice in the **Federal Register** on September 12, 1997 for 60 days. During this comment period no comments were received by the Department of Justice. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 24, 1997.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: A 1-Minute Survey on Curfews.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form, None; Sponsoring component, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary, State and local governments; Other, Not-for-profit institutions. The purpose of the data collection is to gather information from jurisdictions on the use of juvenile curfew and its effectiveness as a tool to reduce juvenile crime and victimization. The survey form will be sent to all those who were mailed a copy of an OJJDP Bulletin on the topic of curfew.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 2,000 respondents at 1 minute per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 33.3 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: November 18, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30759 Filed 11–21–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97–61; Exemption Application No. D–09685, et al.]

Grant of Individual Exemptions; EBPLife Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

EBPLife Insurance Company, Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 97–61, Application No. D–9685]

Exemption

Section I—Transaction

The restrictions of section 406(a) of the Act shall not apply, effective from April 15, 1994, to July 1, 1997, to the reinsurance of risks and the receipt of premiums therefrom by EBPLife Insurance Company (EBPLife) in connection with certain stop-loss policies (the Stop-Loss Policy or Stop-Loss Policies) issued by unrelated third party insurance carriers (the Carriers or Carrier) to employers (the Employers or Employer) any of whose employees were covered by various employee welfare benefit plans (the Plans or Plan),[1] when at the time EBPLife reinsured risks and received premiums, Affiliates of EBPLife, as defined in paragraph (a) of section III below or the predecessors of such Affiliates also provided non-discretionary administrative services to such Plans for a fee, provided that the conditions set forth in section II below were satisfied.

Section II—Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements, as of the effective dates of this exemption:

(a) Each transaction was effected by EBPLife in the ordinary course of its business as an insurance company;

(b) The terms of each transaction were at least as favorable to the Plans as those negotiated at arm's-length with unrelated third parties under similar circumstances;

(c) The combined total of all fees and other consideration received by EBPLife, its Affiliates, and predecessors of such Affiliates for the provision of services to Employers and their Plans and in connection with the purchase of insurance contracts was not in excess of ''reasonable compensation'' within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

(d) EBPLife, its agents or Affiliates, or the predecessors to such Affiliates have not served as: (1) trustees to any of the Plans (other than as non-discretionary trustees, as defined in paragraph (f) in section III below, who do not render investment advice with respect to any of the assets of such Plans); (2) plan administrators, within the meaning of section 3(16)(A) of the Act; (3) fiduciaries who are expressly authorized in writing to manage, acquire, or dispose of the assets of any of the Plans; or (4) employers any of whose employees are covered by any of the Plans.

(e) EBPLife, its Affiliates, or the predecessors of such Affiliates have not acted as fiduciaries in connection with the decision by the Employer to purchase Stop-Loss Policies reinsured by EBPLife;

(f) As of the effective dates of this exemption, if an Employer executed an agreement (the Administration Agreement) with the Affiliates of EBPLife or with the predecessors of such Affiliates to provide services to an Employer or Plan; and such Employer also purchased or renewed a Stop-Loss Policy reinsured by EBPLife for the purpose of funding a Plan, then the fiduciaries of such Plan (the Plan Fiduciaries or Plan Fiduciary), as defined in paragraph (g) of section III below, must have received prior to the decision which resulted in the retention of Affiliates of EBPLife or the predecessors of such Affiliates to provide services and stop-loss insurance reinsured by EBPLife, a full and detailed written disclosure, including but not limited to a copy of the Administration Agreement which, among other things, disclosed whether EBPLife reinsured risk under a Stop-Loss Policy issued to the Employer of such Plan and described all of the services provided by EBPLife, its Affiliates, or the predecessors of such Affiliates to such Plan or such Employer. Such disclosures have been provided by EBPLife or its Affiliates or by the predecessors of such Affiliates, in a form calculated to be understood by such Plan Fiduciaries who have no special expertise in insurance.

(g)(1) As of the effective dates of this exemption, and prior to the execution of a transaction described in this exemption, following receipt of the disclosures, described in paragraph (f) of this section II, the Plan Fiduciary, by signing the Administration Agreement, acknowledged receipt of such disclosures and acknowledged that the decision to engage in a transaction which is the subject of this exemption was a decision made in a fiduciary capacity, and that such Plan Fiduciary approved of the subject transaction.

(2) With respect to the renewal by Employers during the effective period of this exemption of expired Stop-Loss Policies reinsured by EBPLife where Affiliates of EBPLife or the predecessors of such Affiliates were parties in interest with respect to a Plan by reason of the provision of services to such Plan, the written disclosures required under paragraph (f) of this section II need not have been repeated, unless—

(A) More than three years had passed since such disclosures were made with respect to the same kind of services provided by the Affiliates of EBPLife or by predecessors of such Affiliates or the same kind of reinsurance of the risk on the Stop-Loss Policies, or

(B) The reinsurance of the risk on such Stop-Loss Policies by EBPLife or the receipt of compensation for services by Affiliates of EBPLife or by predecessors of such Affiliates thereto was materially different from that for which approval described in paragraph (g) of this section II was obtained.

(h) The Plans have paid no commission with respect to the reinsurance by EBPLife of the Stop-Loss Policies.

(i) Each of the Plan Fiduciaries have not received, directly or indirectly (i.e. through any Affiliates), any compensation or other consideration for his or her own personal account from EBPLife, any of its Affiliates, any predecessors of such Affiliates, or other party dealing with any of the Plans in

[1] The Department, herein, is not providing relief for transactions involving any plans sponsored by EBPLife or its affiliates (the Affiliates), as defined in paragraph (a) of section III below, or any predecessors of such Affiliates. In this regard, EBPLife represents that it may have issued stop-loss or other insurance contracts in connection with welfare benefit plans that covered employees of EBPLife, its Affiliates or predecessors of such Affiliates. However, in all cases, EBPLife represents that it either satisfies the requirements of the statutory exemption provided by section 408(b)(5) of the Act, or it ensures that the insurance contracts are not ''plan assets'' within the meaning of the Act.

connection with a transaction described in this exemption.

(j) EBPLife and its Affiliates and any predecessors of such Affiliates followed the standard claims processing practices regarding any claims submitted with respect to benefits under any of the Plans covered by any of the Stop-Loss Policies reinsured by EBPLife;

(k) The Employer had final authority regarding the payment or nonpayment of any and all claims submitted with respect to benefits under any of the Plans covered by the Stop-Loss Policies reinsured by EBPLife;

(l) EBPLife or its Affiliates or the predecessors of such Affiliates have made available upon request by the Employers of each of the Plans at no additional charge full and detailed written reports which detail any and all of the following information:

(1) The average turn-around time from the date that a claim was initially received to the date that the claim was processed for payment;

(2) The percentage of claims processed within the target period, as set forth in the Administration Agreement;

(3) The average turn-around time from the date that a claim was received to the date that a claim was actually paid; and

(4) A summary of pending claims that were received but not paid accompanied by a code indicating the reason why each claim had not yet been paid.

(m) Regarding its operations and reserves, EBPLife complied with all applicable requirements of law and insurance regulations of the State of Oklahoma, where it is domiciled and licensed to do business;

(n) EBPLife has been subject to a financial audit by the Department of Insurance of the State of Oklahoma, where it is domiciled and licensed to do business no less frequently than once every three years;

(o) The issuing Carriers of the Stop-Loss Policies are fully liable for all claims covered by the Stop-Loss Policies in excess of the applicable stop-loss limits under such Stop-Loss Policies;

(p) Where the Stop-Loss Policies are reinsured by EBPLife, EBPLife, as reinsurer, is fully liable for the payments of claims under such Stop-Loss Policies;

(q) Independent insurance consultants, who were unrelated to EBPLife, its Affiliates, or to the predecessors of such Affiliates, solicited bids for administrative services and/or Stop-Loss Policies on behalf of Employers and served as brokers or agents to Employers with respect to the purchase by Employers of Stop-Loss Policies reinsured by EBPLife;

(r)(1) EBPLife or its Affiliates retain or the predecessors of such Affiliates have retained for a period of six (6) years from the date of any transaction covered by this exemption, the records necessary to enable the persons, as described in paragraph (s) of this section II, to determine whether the conditions of this exemption have been met. Such records shall include, but not be limited to, the following information:

(A) A copy of the information disclosed by EBPLife, its Affiliates, or by the predecessors of such Affiliates to the Plan Fiduciaries, pursuant to paragraph (f) of section II above;

(B) A copy of the Administration Agreement which discloses, among other things, whether EBPLife reinsures risk under a Stop-Loss Policy issued to an Employer;

(C) Any additional information or documents provided to any Plan Fiduciary with respect to a transaction covered by this exemption;

(D) Evidence of the written acknowledgment of receipt of disclosures by the Plan Fiduciary as described in paragraph (g) of this section II.

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of EBPLife, its Affiliates, or the predecessors of such Affiliates, such records were or are lost or destroyed prior to the end of the six (6) year period.

(3) No party in interest, other than EBPLife, its Affiliates, and the predecessors of such Affiliates, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, if the records are not maintained, or are not available for examination as required by paragraph (s) of this section II; and

(S)(1) Except as provided in paragraph (s)(2) of this section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) of section II above are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor;

(B) Any fiduciary of each of the Plans or any duly authorized employee or representative of such fiduciary; and

(C) Any Employer of Plan participants and beneficiaries, any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary; any employee organization any of whose members are covered by a Plan.

(2) None of the persons described in paragraph (s)(1) (B) and (C) of section II shall be authorized to examine trade secrets of EBPLife, its Affiliates, or the predecessors of such Affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(a) An ''Affiliate'' or ''Affiliates'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term, ''relative,'' means a ''relative'' as that term is defined in section 3(15) of the Act, or a brother, a sister, or a spouse of a brother or a sister.

(e) The term ''non-discretionary services'' means custodial services and services ancillary to custodial services, none of which services are discretionary.

(f) The term ''non-discretionary trustee'' of a Plan means a trustee whose powers and duties with respect to any assets of the Plan are limited to (1) the provision of non-discretionary trust services, as defined in paragraph (e) of this section III, to the Plan, and (2) duties imposed on the trustee by any provision or provisions of the Act.

(g) The term ''Plan Fiduciary'' or ''Plan Fiduciaries'' means a person(s) who are independent of EBPLife, its Affiliates, and any predecessors of such Affiliates, are sufficiently knowledgeable with respect to administration, benefits, funding, and any matters related thereto concerning such Plan, are capable of making an informed and independent decision, and are responsible for executing the Administration Agreement and for deciding to purchase or renew the Stop-Loss Policies reinsured by EBPLife.

EFFECTIVE DATE: The exemption is effective, from April 15, 1994, to July 1, 1997.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days

of the date of the publication of the Notice in the **Federal Register** on July 11, 1997. All comments and requests for hearing were due by August 25, 1997. Subsequently, on two occasions the applicant requested additional time within which to notify interested persons. Accordingly, the Department agreed to extend the comment period to October 29, 1997.

As of the close of the extended comment period, the Department had received no requests for hearing. However, the Department did receive a comment letter from the applicant, EBPLife, dated September 3, 1997, in which the applicant confirmed the July 1, 1997, sale by First Data Corporation of its administrative service affiliate, First Health, to an unrelated company. As a result of that sale, EBPLife no longer has current plan sponsor clients with respect to which it, or its Affiliates, provides both reinsurance and non-discretionary administrative services. Accordingly, the Department has determined to amend the effective date of the exemption to cover the period from April 15, 1994, the date the application was filed, to July 1, 1997, the date when the First Health was sold.

After full consideration and review of the entire record, including the written comment filed by the applicant, the Department has determined to grant the exemption, as modified and clarified above. The comment submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on July 11, 1997, 62 FR 37299.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Franklin & Davis, P.C. Profit Sharing Plan (the Plan), Located in Troy, Michigan

[Prohibited Transaction No. 97–62; Exemption Application No. D–10450]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to two loans (the Loans) totaling $229,000 to Franklin & Davis, P.C. (F&D), the Plan's sponsor and a disqualified person with respect to the Plan, by the individual account (the Account) of Bruce W. Franklin (Mr. Franklin), provided the following conditions are satisfied: (a) The terms of the Loans are at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party; (b) the Loans do not exceed 25% of the assets of the Account; (c) the first Loan (Loan 1) is secured by a second mortgage on certain real property which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of Loan 1 plus the balance of the first mortgage which it secures; (d) the second Loan (Loan 2) is secured by certain securities which have a fair market value not less than 200% of Loan 2; and (e) the fair market value of the collateral remains at least equal to the percentages described in conditions (c) and (d), above, throughout the duration of the Loans.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 2, 1997 at 62 FR 51692.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 19th day of November, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–30827 Filed 11–21–97; 8:45 am]

BILLING CODE 4510–29–P

[2] Since Mr. Franklin is the sole owner of F&D and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10328, et al.]

Proposed Exemptions; MS Commodity Investments Portfolio II, L.P. (the Partnership, et al.)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and

include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713,October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

MS Commodity Investments Portfolio II, L.P. (the Partnership) and Morgan Stanley Commodities Management, Inc. (MSCM, Collectively the Applicants), Located in New York, NY

[Application Nos. D–10328 and D–10329]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D), shall not apply, effective April 3, 1996, to the acquisition or redemption of units (the Units or Unit) in the Partnership by certain plans (the Plans or Plan) that invest in the Partnership, where MSCM, the general partner of the Partnership, and/or its affiliates are parties in interest and/or disqualified persons with respect to such Plans; provided that the conditions, as set forth below in Section II are satisfied as of the effective date of this exemption.[1]

Section II. General Conditions

This proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to the exemption.

(a) Prior to the investment of the assets of a Plan in the Partnership, a fiduciary of such Plan (the Plan Fiduciary or Plan Fiduciaries) who is/are independent of MSCM and its affiliates must approve such investment.

(b) MSCM has determined and documented and will determine and document, pursuant to a written procedure, that the decision of a Plan to invest in the Partnership was and will be made by a Plan Fiduciary who was and is independent of MSCM and its affiliates and who was and is capable of making an informed investment decision about investing in the Partnership.

(c) The independent Plan Fiduciary of each Plan investing in the Partnership has retained and will retain complete discretion with respect to transactions initiated by such Plan involving the acquisition or redemption of Units in the Partnership.

(d) Neither MSCM nor its affiliates has any discretionary authority or control with respect to the investment of assets by Plans in the Partnership nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c) with respect to the investment of such assets.

(e) No Plan investing in the Partnership has acquired and held or will acquire or hold Units in the Partnership that represent more than 20 percent (20%) of the assets of the Partnership.

(f) At the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired and held by such Plan does not exceed 10 percent (10%) of the assets of such Plan.

(g) At the time transactions are entered into, the terms of such transactions are at least as favorable to the Plans as those obtainable in arm's length transactions with an unrelated party.

(h) No Plan has paid or will pay a fee or commission to MSCM or any of its affiliates by reason of the acquisition or redemption of Units in the Partnership.

(i) The total fees paid to MSCM have constituted and will constitute no more than reasonable compensation, within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

(j) Only Plans with assets having an aggregate market value of at least $25 million have been and will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the $25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust.

(k) Prior to making an investment in the Partnership, the independent Plan Fiduciary of each potential Plan investor, and/or such Plan investor's authorized representative has been and will be provided by MSCM or by an affiliate with a written copy of the following offering materials:

(1) the Private Placement Memorandum of the Partnership (the Memorandum) (which contains among other things, a description of the offering of Units, all material facts concerning the purpose, structure, and operation of the Partnership, as well as any associated risk factors, and a description of the relationships existing

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

between MSCM, Morgan Stanley Asset Management Inc. (MSAM), Morgan Stanley & Co. Incorporated (MS&Co), and Morgan Stanley Group Inc. (the MS Group));

(2) the then-current limited partnership agreement (the LP Agreement) between MSCM and the investors in the Partnership; and

(3) the then-current subscription agreement (the Subscription Agreement) (an executed copy of which is delivered to a subscriber and/or its authorized representative as soon as practicable following such subscriber's investment in the Partnership) and the Investor Certification previously furnished by MSCM or its affiliates to the independent Plan Fiduciaries for completion which contains information about each potential Plan investor, specifies such Plan's proposed investment in the Partnership, and documents the fact that the investment decision is being made by an independent Plan Fiduciary who is capable of making an informed investment decision about investing in the Partnership.

(l) With respect to the ongoing participation in the Partnership, the independent Plan Fiduciary of each Plan invested in the Partnership has received and will receive, within the time periods specified below, the following additional written disclosures from MSCM or from its affiliates:

(1) within ninety (90) days after the close of each fiscal year, audited financial statements of the Partnership, prepared annually by a qualified, independent, public accountant including:

(i) a balance sheet; (ii) a statement of income or a statement of loss; (iii) the net asset value of the Partnership, as of the end of the two preceding fiscal years; (iv) either: (A) the net asset value per outstanding Unit as of the end of the reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such period; (v) a statement of changes in partner's capital; and (vi) the amount of the total fees paid to MSCM or to its affiliates by the Partnership during such period.

(2) within thirty (30) days after the end of each calendar month, a monthly statement of account prepared by MSCM or by its affiliates containing the following unaudited financial information:

(i) the total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period; (ii) the change in unrealized net gain or loss on commodity interest positions during such reporting period; (iii) the total amount of net gain or loss from all other transactions in which the Partnership engaged during such reporting period; (iv) the total amount of management fees, advisory fees, brokerage commissions, and other fees for commodity interests and other investment transactions incurred or accrued by the Partnership during such reporting period; (v) the net assets value of the Partnership as of the beginning of such reporting period; (vi) the total amount of additions to Partnership capital made during such reporting period; (vii) the total amount of withdrawals from and redemption of Units in the Partnership during such reporting period; (viii) the total net income or loss of the Partnership during such reporting period; (ix) the net assets value of the Partnership as of the end of such reporting period; and (x) either (A) the net asset value per outstanding Unit as of the end of such reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such reporting period.

(m) The Partnership has not engaged and will not engage in swaps transactions, as defined in Section III(d) below.

(n) The Partnership has not invested in and will not invest in any entity in which MS Group or any of its affiliates has an ownership interest.

(o) Affiliates of MSCM have not invested in and will not invest in the Partnership.

(p) The non-U.S. commodity trading activities of the Partnership has been and will be limited to the London Metals Exchange (the LME).

(q) The Applicants have not accepted and will not accept subscriptions from Plans which permit participants to exercise control over the decision to acquire or redeem Units;

(r) MSCM has maintained and shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (s) of this Section II to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MSCM and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than MSCM shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records have not been maintained or are not maintained, or have not been available or are not available for examination as required by paragraph (s) of this Section II below.

(s)(1) Except as provided in subsection (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(a) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(b) any fiduciary of any Plan investing as a limited partner in the Partnership or any duly authorized representative of such fiduciary;

(c) any contributing employer to any Plan investing as a limited partner or any duly authorized employee representative of such employer;

(d) any participant or beneficiary of any participating Plan investing as a limited partner, or any duly authorized representative of such participant or beneficiary; and

(e) any other limited partner.

(2) None of the persons described above in subparagraphs (b)–(e) of paragraph (s)(1) of this Section II shall be authorized to examine the trade secrets of MSCM or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) An *affiliate* of a person includes—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control of such person. (For purposes of this subsection, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) any officer, director, or partner in such person, and

(3) any corporation or partnership of which such person is an officer, director, or a 5 percent (5%) or more partner or owner.

(b) A *Plan* or the *Plans* has not included and will not include any individual account plan(s) where participants have the right to exercise control over the decision to acquire or redeem Units.

(c) A *Plan Fiduciary* or *Plan Fiduciaries* is defined as a fiduciary or fiduciaries of a Plan who is/are independent of MSCM and its affiliates.

(d) A *swap transaction* is defined as an individually negotiated, non-standardized agreement between two parties to exchange cash flows at specified intervals known as payment or

settlement dates. The cash flows of a swap are either fixed, or calculated for each settlement date by multiplying the quantity of the underlying asset (notional principal amount) by specified reference rates or prices. Depending upon the type of underlying asset, the great majority of these transactions are classified into interest rate, currency, commodity, or equity swaps. Interim payments are generally netted, with the difference being paid by one party to the other.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective retroactively, as of April 3, 1996, the date the Partnership was organized.

Summary of Facts and Representations

1. The MS Group is a publicly-traded company whose shares are listed on the New York Stock Exchange. The MS Group is a worldwide financial services firm employing more than 9,000 people which provides, directly or through its subsidiaries, services to a large and diversified group of clients and customers, including corporations, governments, and individual investors.

One subsidiary of the MS Group is MS&Co, a Delaware corporation with business offices in New York, New York. MS&Co is a registered futures commission merchant, a member of the National Futures Associations (NFA), a registered broker-dealer, a member of the National Association of Securities Dealers, and a member of most major United States and foreign commodity exchanges.

MSCM, a Delaware corporation, is a wholly-owned subsidiary of the MS Group. Since June 4, 1992, MSCM has been a registered commodity pool operator and commodity trading advisor and, as of the same date, has been a member of the NFA in such capacities. Currently, MSCM serves as the trading advisor for several U.S. and offshore funds. As of January 31, 1997, MSCM had $10 million in total assets and $8.5 million in total shareholder's equity. As of January 31, 1997, MSCM had total assets under management of approximately $130,740,000.

Another wholly-owned subsidiary of the MS Group, MSAM, a Delaware corporation, is registered with the Securities and Exchange Commission as an investment adviser, is registered with the Commodity Futures Trading Commission as a commodity trading advisor, and is a member of the NFA in such capacity. MSAM also meets the definition of a ''qualified professional asset manager'' as contained in Part V of the Department's Prohibited Transaction Class Exemption 84–14.[2]

2. The Partnership is a Delaware limited partnership with offices in New York, New York. The aggregate fair market value of the total assets of the Partnership, as of August 15, 1996, was approximately $15 million. The Partnership was organized on April 3, 1996, in order to trade, buy, sell, or otherwise acquire, hold, or dispose of commodity futures contracts (the Commodity Interests) on U.S. commodity exchanges and on non-U.S. commodity exchanges. It is represented that the Partnership may engage in the business of trading commodity interests directly or through partnerships, joint ventures, or similar arrangements.

It is represented that the trading strategy of the Partnership has been and will be applied to a broad range of commodities, including commodity interests on metals, energy products, grains, livestock, and other commodities selected by MSCM from time to time. It is represented that the assets of the Partnership has consisted and will consist solely of cash, Treasury securities, and positions with respect to exchange-traded futures contracts. Further, the Applicants have agreed as a condition of this exemption that the Partnership will not engage in swaps transactions, as defined in Section III(d) above.

The Applicants represent that the Partnership has invested and will invest solely in assets for which independent, objective pricing information is readily available. In this regard, the Applicants state that the Partnership's open futures positions are valued by reference to the closing price for each futures contract on the applicable commodity exchange. It is represented that the current value of any Treasury securities has been and will be determined by reference to prices established in over-the-counter transactions by persons unaffiliated with MSCM.

It is further represented that the trading strategy of the Partnership has been and will be limited in the following manner: (a) The Partnership has maintained and will maintain only long positions in Commodity Interests; (b) The Partnership has traded and will trade only futures contracts that are or may be traded on U.S. commodity exchanges or the LME; (c) the Partnership has not traded and will not trade interests on financial instruments (including stock indices) and foreign currencies; (d) the underlying value of the positions entered into in the commodity interest markets has been and will be targeted at 1.0 times the assets of the Partnership; (e) at the time of the initial closing and thereafter upon every portfolio reweighting: a minimum of 10 percent (10%) of the Partnership's assets has been and will be exposed to commodity sectors in energy, precious metals, and base metals; a maximum of 25 percent (25%) of the Partnership's assets have been and will be exposed to any one sector; and a maximum of 15 percent (15%) of the Partnership's assets have been and will be exposed to one particular commodity.

The Applicants have agreed that as a condition of this exemption, any non-U.S. commodity trading activities of the Partnership will be limited to the LME, which is subject to substantial regulation by the Securities and Futures Authority and the Securities Investment Board in the United Kingdom.

3. MSCM, as the sole discretionary general partner of the Partnership, controls, conducts, and manages the business of the Partnership, including executing various documents on behalf of the Partnership, determining the distributions, if any, of profits and income, and supervising the liquidation of the Partnership. It is represented that the affairs of the Partnership will be wound up and the Partnership liquidated as soon as practicable upon the first to occur of: (a) December 31, 2026, or (b) certain other terminating events, as set forth in the LP Agreement.

In addition, MSCM has retained MSAM, an affiliate of MSCM, as the trading advisor for the Partnership and cash management advisor with overall responsibility for the investment of the assets of the Partnership and for the Partnership's trading. MSAM has selected MSCM to make trading decisions on behalf of the Partnership of Commodity Interests on all U.S. exchanges and on the LME. It is represented that notwithstanding any such delegation, MSAM remains liable to the Partnership for the trading of Commodity Interests on behalf of the Partnership, to the same extent as if MSAM alone were making the actual trading decision regarding such Commodity Interests.

With respect to the trading of Commodity Interests by the Partnership, MSCM has retained: (1) MS&Co to act as the futures commission merchant with respect to trading by the Partnership on U.S. exchanges; and (2) Morgan Stanley International Limited to act as the futures commission merchant with respect to trading by the Partnership on the LME. In this regard, the Applicants

[2] The final exemption for PTCE 84–14 was published in the **Federal Register** on March 13, 1984, (49 FR 9494), and the proposed exemption was published in the **Federal Register** on December 21, 1982, (47 FR 56945).

have represented that, in connection with the Partnership's commodity trading activities, any transaction on the LME with respect to which it eventuates that an affiliate of MSCM is the formal counterparty, will be a ''blind transaction'' (*i.e.*, one in which the identity of the counterparty is not within the knowledge or control of MSCM or any affiliate thereof). The Applicants represent that, in connection with any commodity trading on the LME, the Partnership and any affiliates of MSCM will retain independent floor brokers. Although it is possible that the Partnership and an affiliate of MSCM will use the same floor broker, the Applicants represent that MSCM will instruct any floor broker retained on behalf of the Partnership not to cross trades with an affiliate of MSCM.

4. The Partnership pays monthly to MSCM an administrative fee (the Administrative Fee) computed daily and equal to a percentage of the net assets of the Partnership, as of the beginning of each day (before deduction of an incentive fee (the Incentive Fee) described below). It is represented that MSCM, as general partner, is responsible for paying all of the ordinary administrative expenses, brokerage commissions, any per transaction service charges, and any other similar fees with respect to trading by the Partnership. To the extent any expenses exceed the amount of the Administrative Fee paid to MSCM, the Partnership is not responsible for the payment of any such additional expenses. However, it is represented that MSCM received from the Partnership reimbursement for organizational expenses and initial offering costs.

Further, the Partnership pays monthly to MSAM for services, as described above, a management fee (the Management Fee) computed daily and equal to a percentage of the net assets of the Partnership as of the beginning of each day, before deduction of the Incentive Fee, as more fully described in the paragraph below. In consideration for making trading decisions with respect to the Partnership with regard to its commodity interest trading, MSAM pays to MSCM 80 percent (80%) of such Management Fee and 100 percent (100%) of the Incentive Fee.

With respect to the Incentive Fee, it is represented that the Partnership pays to MSAM at the end of each annual incentive period an Incentive Fee equal to a percentage of the amount that the Partnership's net performance exceeds a target return. Net performance equals the realized and unrealized trading profits and losses of the Partnership plus interest income credited to the Partnership, less the Management Fee, the Administrative Fee, and other fees and costs of the Partnership (but not including the Incentive Fee, initial offering costs, and extraordinary expenses). Net Performance is measured over a period of not less than one (1) year. The target return against which this performance is compared is a predetermined objective index. It is represented that the calculation of the Incentive Fee complies with the terms and conditions of SEC Rule 205–3 and is reviewed by an independent accounting firm as part of an annual audit of the Partnership's financial statements.[3]

5. It is represented that Units in the Partnership have been and will be offered to investors under exemptions from registration, pursuant to section 4(2) of the Securities Act of 1933 (the 1933 Act) and Rule 506 of Regulation D promulgated thereunder.[4] It is represented that, as the Partnership is not a private investment company, it is not required to limit the number of its investors to 100.

The Memorandum provided for an initial offering of Units in the Partnership for sale through MS&Co for a period of thirty (30) days from the date of the Memorandum (*i.e.*, May 23, 1996), subject to the discretion of MSCM to shorten or extend such period. No minimum amount of sales of Units was necessary in order for the initial offering to close. In this regard, it is represented that the date of the initial closing was July 1, 1996.

Following the initial closing, Units in the Partnership have been and will be continually offered on a daily basis through MS&Co to new investors who are qualified and to existing limited partners of the Partnership in a private offering (the Continuous Offering). In this regard, the Partnership may continue indefinitely to sell Units, subject to the discretion of MSCM which may at any time or from time to time terminate and recommence the offering. The Applicants have agreed, as a condition of this exemption, that affiliates of MSCM will not be permitted to invest in the Partnership.

After the initial offering, the minimum investment in the Partnership per subscriber is $5,000,000, with a $50,000 minimum for additional investments by existing limited partners in the Partnership, subject to exceptions at the discretion of MSCM. There is no limit on the total capitalization of the Partnership. It is represented that as of April 2, 1997, the capital of the Partnership totaled $25,400,000.

During the Continuous Offering, Units have been and will be issued as of the close of business each business day at a price per Unit equal to the net asset value per Unit, as of the date of issuance. The net asset value of a Unit is defined as net assets allocated to capital accounts divided by the aggregate number of Units. It is represented that the net assets of the Partnership are determined in accordance with generally accepted accounting principles consistently applied under the accrual basis of accounting. It is represented that the market values of the Commodity Interests of the Partnership are determined by MSCM in good faith on a basis consistently applied in accordance with generally accepted accounting principles.

6. The Applicants maintain that the assets of the Partnership may be deemed to be plan assets pursuant to 29 CFR 2510.3–101 of regulations issued by the Department (the Plan Asset Regulations). Under the Plan Asset Regulations, when a plan acquires an equity interest in an entity, such as the Partnership, which interest is not a publicly offered security (as in the case of the Units), nor a security issued by an investment company registered under the Investment Company Act of 1940, the underlying assets of the entity will be deemed to include plan assets, if 25 percent (25%) of the outstanding interests of such entity are held by ''benefit plan investors,'' as defined in the Plan Asset Regulations. It is anticipated that prior to the grant of this proposed exemption the equity participation by Plans in the Partnership may exceed 25 percent (25%) of the total value of all of the Partnership Units. If and when such event occurs, the underlying assets of the Partnership will constitute ''plan assets'' within the meaning of 29 CFR 2510.3–101. Accordingly, the Applicants have requested that the exemption be effective, as of April 3, 1996, the date on which the Partnership was organized.

[3] The Applicants maintain that the Incentive Fee structure, described herein, is comparable in several respects to the performance fee arrangements previously reviewed by the Department of Labor in certain advisory opinion letters, 86–20A. 86–21A, and 89–31A. In this regard, the Applicants have not requested relief for the receipt of the Incentive Fee by MSAM and/or by its affiliates. The Department, herein, offers no opinion as to whether the Incentive Fee structure violates any provision of the prohibited transaction provisions of section 406 of the Act, nor is the Department providing relief, herein, for the receipt by MSCM or by its affiliates of any Incentive Fee.

[4] Rule 506 provides a special exemption for limited offers and sales of securities by an issuer without regard to the dollar amount of the offering. In particular, Rule 506(b)(2)(i) limits to 35 the number of non-accredited investors in an offering.

7. Once the assets of the Partnership are deemed to be assets of the Plans which invest in the Partnership, by virtue of its discretionary authority and control over such assets as general partner, MSCM becomes a fiduciary within the meaning of section 3(21) of the Act, and a party in interest, pursuant to section 3(14)(A) of the Act, with respect to any Plan which invests in the Partnership.

Further, the MS Group anticipates that Plans for which the MS Group or its affiliates perform services will invest in the Partnership. In this regard, as set forth in the most recent Memorandum, it is represented that the MS Group or its affiliates provide: (a) Brokerage services to plans; (b) asset management and/or investment advisory services to plans; and (c) services to plans as custodian, clearing agent, and/or trustee. Accordingly, MSCM may also be a party in interest with respect to Plans which invest in the Partnership by virtue of the affiliation of MSCM with other entities that are fiduciaries of Plans or that provide services to such Plans. It is further represented that other partners of the Partnership, as yet unidentified, may also be parties in interest with respect to Plans which invest in the Partnership.

8. The Applicants seek a retroactive exemption for the acquisition of Units in the Partnership by Plans from MSCM, the general partner of the Partnership, and other potential parties in interest with respect to such Plans, which may constitute prohibited transactions between such Plans and such parties in interest under section 406(a) of the Act. In this regard, the acquisition of Units by the Plans may be characterized as an indirect sale by each existing partner of the Partnership of a portion of its Partnership interest to such investing Plan (and a corresponding transfer of Plan assets) in violation of section 406(a)(1)(A) and/or 406(a)(1)(D) of the Act. Likewise, the redemption of Units by a Plan may be characterized as an indirect sale of a portion of such Plan's redeemed interest in the Partnership to each remaining partner (and a corresponding transfer of Plan assets) in violation of section 406(a)(1)(A) and/or 406(a)(1)(D) of the Act, if a party in interest to the Plan is involved. Accordingly, the Applicants request an administrative exemption from the Department with respect to the acquisition and redemption of Units in the Partnership by Plan investors.

As discussed above, the Applicants have represented that MSCM and its affiliates provide various investment-related services to Plans that may invest in the Partnership and also provide comparable services to the Partnership. In this regard, the Applicants are of the opinion that in the ordinary course of trading of commodities futures, any prohibited transactions that may arise, other than those for which relief is proposed herein, would result from the Partnership engaging in trading through a futures commission merchant that is a party in interest with respect to a Plan invested in the Partnership. To the extent that the provision of services by MSCM and its affiliates to the Partnership constitutes an indirect furnishing of services to Plans invested in the Partnership which is prohibited under section 406(a) of the Act, the Applicants intend to rely on the statutory exemption provided by section 408(b)(2) of the Act.[5] Furthermore, the Applicants represent that any brokerage fees paid to affiliates of MSCM have not and will not be expenses of the Partnership but have been and will be paid by MSCM. Finally, with respect to the selection of MSCM or an affiliate to provide services to the Partnership for a fee, the Applicants represent that neither MSCM nor any of its affiliates have investment discretion or render investment advice with respect to any assets of the plans used to purchase Units in the Partnership. As a result, it is the Applicant's opinion that the furnishing of these services have not and will not constitute an act of self-dealing prohibited by section 406(b) of the Act.[6]

9. At the time the application for exemption was submitted to the Department, it was represented that the Plans that have been or may be affected by the grant of this proposed exemption could not be determined. Upon submission of the application, MSCM represented that it did not anticipate investment in the Partnership by individual retirement accounts, by Keogh plans, and or by employee benefit plans which provide for participant-directed investments. However, the application did not preclude such investment to the extent that such plans could satisfy the investor certification requirements and other conditions, as set forth in the Subscription Agreement. The Applicants anticipate that sponsors or fiduciaries of plans providing for participant-directed investment may wish to include Units in a diversified portfolio that is one of several designated investment alternatives. However, as a condition of the exemption, the Applicants have agreed not to accept subscriptions by Plans which permit participants to exercise control over the decision to acquire or redeem Units.

10. Only Plans with assets having an aggregate market value of at least $25 million will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the $25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust. In addition, prior to accepting a subscription from a prospective Plan investor, the Plan Fiduciaries who are independent of the Applicants and their affiliates complete certain investor certification representations in the Subscription Agreement. In this regard, each Plan and/or its authorized representative is required to represent that such Plan is an ''accredited investor,'' within the meaning of Rule 501(a) of Regulation D promulgated under the 1933 Act, and a ''qualified eligible participant,'' as defined in Rule 4.7 under the Commodities Exchange Act, as amended. Each Plan and/or its authorized representative is also required to represent that such Plan, together with any advisers retained by it, has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of investing in the Partnership.[7] Furthermore, each

[5] Section 406(b)(2) of the permits any reasonable arrangement with a party in interest, for services necessary for the establishment or operation of a plan, provided that no more than reasonable compensation is received therefor. The Department express no opinion, herein, as to whether the provision of services to the Partnership by MSCM and/or its affiliates and the compensation received therefor satisfy the terms and conditions of section 408(b)(2) of the Act.

[6] The Applicants believe that the analysis contained in Advisory Opinion 82–26A (June 9, 1982) is applicable to the provision of multiple services by MSCM and/or its affiliates. This opinion involved the provision of multiple services where a fiduciary did not use the authority, control, or responsibility which made it a fiduciary to cause the plan to select such fiduciary or to pay any fee for the provision of services by such fiduciary. In addition, the Applicants rely on Advisory Opinion 82–62A (December 8, 1982) which involved a fiduciary's decision to retain an affiliate to provide services to a plan, where the fee for such services was paid by the plan sponsor not by the plan and where the fiduciary of the plan was not in a position to benefit, or to cause a person to whom the fiduciary had an interest to benefit from such decision at the expense of such plan. Thus, the Department is not offering relief, herein, for the provision of multiple services by MSCM and/or its affiliates.

[7] The Department wishes to note that ERISA's general standards of fiduciary conduct would apply to the investment described in this proposed exemption, and that satisfaction of the conditions of this proposal should not be viewed as an endorsement of the investment by the Department. Section 404 of ERISA requires, among other things,

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subscriber that is purchasing Units with the assets of a Plan is required to represent: (a) That it has evaluated for itself the merits of the investment; (b) that it has not solicited and has not received from the Partnership, from MSCM, or from any affiliate thereof any evaluation or investment advice in respect of the advisability of such an investment in light of the Plan's assets, cash needs, investment policies or strategy, overall portfolio, or diversification of assets; (c) that it is not relying on and has not relied on MSCM, or on any affiliate thereof, for any such investment advice; and (d) that neither MSCM nor its affiliates has investment discretion with respect to the assets of the Plan which have been or will be used to acquire or redeem Units.[8]

11. Prior to investing in the Partnership, each potential investor and/or its authorized representative (including a Plan and/or a Plan Fiduciary) has been and will be provided with a copy of: (a) The Memorandum (which contains, among other things, a description of the offering and the relationships existing between MSCM, MSAM, MS&Co, and the MS Group; (b) the then-current LP Agreement; (c) the then-current Subscription Agreement (an executed copy of which is also delivered to a subscriber and or its authorized representative, including a Plan and/or a Plan Fiduciary, as soon as practicable following investment in the Partnership by such subscriber). Further, the Applicants represent that a copy of this notice of proposed exemption (the Notice) and a copy of the final exemption (the Final Exemption), if granted, will be provided to all Plans that invest in the Partnership subsequent to the publication of the Final Exemption in the **Federal Register**.

12. It is represented that MSCM has distributed and will distribute to each Plan that invests in the Partnership as a limited partner (a) within ninety (90) days after the close of each fiscal year of the Partnership, audited financial statements (including a balance sheet; a statement of income or a statement of loss; the net asset value of the Partnership, as of the end of the two preceding fiscal years; either (A) the net asset value per outstanding Unit as of the end of the reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such period; a statement of changes in partner's capital; and the amount of the total fees paid to MSCM or to its affiliates by the Partnership during such period.

It is also represented that MSCM has distributed and will distribute to each Plan that invests in the Partnership as a limited partner within thirty (30) days after the end of each calender month, a report for such month specifying, among other things: (i) The total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period; (ii) the change in unrealized net gain or loss on commodity interest positions during such reporting period; (iii) the total amount of net gain or loss from all other transactions in which the Partnership engaged during such reporting period; (iv) the total amount of management fees, advisory fees, brokerage commissions, and other fees for commodity interests and other investment transactions incurred or accrued by the Partnership during such reporting period; (v) the net assets value of the Partnership as of the beginning of such reporting period; (vi) the total amount of additions to Partnership capital made during such reporting period; (vii) the total amount of withdrawals from and redemption of Units in the Partnership during such reporting period; (viii) the total net income or loss of the Partnership during such reporting period; (ix) the net assets value of the Partnership as of the end of such reporting period; and (x) either (A) the net asset value per outstanding Unit as of the end of such reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such reporting period.

13. It is represented that a capital account is established for each partner in the Partnership, including the Plans. However, in this regard, it is represented that investors in the Partnership may not allocate invested funds to any specific investment. Instead, the funds raised through the offering of Units have been and will be deposited in an account maintained by the Partnership with MS&Co or to the extent the Partnership trades on the LME, deposited in certain accounts maintained with non-U.S. banks and foreign brokers.

14. Under current federal and state income tax laws, MSCM (in its capacity as general partner of the Partnership) may be required to maintain contributions to the capital of the Partnership in cash for all fiscal years in amounts which equal at least one percent (1%) of the aggregate capital contributions to the Partnership by all partners for all fiscal years (including contributions by MSCM). On July 1, 1996, the date of the closing of the initial offering of Units in the Partnership, MSCM had contributed $120,694 to the Partnership. As of January 31, 1997, the aggregate contributions by MSCM to the Partnership totaled $172,000. The Applicants represent that, MSCM will not maintain an interest in the Partnership that exceeds one percent (1%) of the aggregate capital contributions to the Partnership by all partners. In the event that MSCM's interest in the Partnership exceeds this amount by more than a *de minimis* amount, MSCM shall, within five (5) business days, reduce its interest to the permitted level by accepting additional subscriptions, if possible, or by withdrawing any portion of its interest in the Partnership that is in excess of one percent (1%) of the Partnership's capital, as permitted under the LP Agreement.

15. It is represented that a limited partner in the Partnership, including a Plan, may sell or transfer Units or any interest therein in the Partnership only with the consent of MSCM. Such

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that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment transaction. The Department further emphasizes that it expects the plan fiduciary to fully understand the benefits and risks associated with engaging in a specific type of investment, following disclosure to such fiduciary of all relevant information. In addition, such plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

[8] The Department is not expressing an opinion on whether the Applicants or their affiliates would be deemed to be fiduciaries under section 3(21)(A)(ii) of the Act. In this regard, the Department believes, as a general matter, that when a person is deemed a fiduciary by virtue of rendering investment advice described in regulation section 2510.3–21(c)(1)(ii)(B), the presence of an unrelated second fiduciary acting on the investment adviser's recommendations on behalf of the Plan is not sufficient to insulate the investment adviser from fiduciary liability under section 406(b) of the Act. The Department's regulation section 2510.3–21(c)(1)(ii)(B) presupposes the existence of a second fiduciary who by agreement or conduct manifests a mutual understanding to rely on the investment adviser's recommendations as a primary basis for the investment of Plan assets. In the presence of such an agreement or understanding, the rendering of investment advice involving self-dealing such as the acquisition of Units in the Partnership which results in the payment of fees to the adviser, will subject the investment adviser to liability under section 406(b) of the Act. The Department is unable to conclude that fiduciary self-dealing of this type (if present) is in the interests or protective of the Plans and their participants and beneficiaries. If, however, the unrelated second fiduciary has not agreed to rely on the investment adviser's recommendations, the investment adviser will not be deemed to be a fiduciary under section 3(21)(A)(ii) because the requirements of regulation section 2510.3–(21)(c)(1)(ii)(B) will not be met. Accordingly, the Department has limited exemptive relief for the acquisition or redemption of Partnership Units to section 406(a) violations only.

consent may be withheld in the sole discretion of MSCM as general partner of the Partnership.

A limited partner, including a Plan, may withdraw all or part of its capital contributions and undistributed profits, if any, by requiring the Partnership to redeem all or part of its Units, effective as of the close of each business day. Redemptions may only be made in amounts greater than or equal to $20,000, unless the limited partner, including a Plan, is redeeming all of its interest in the Partnership. A limited partner may not make a partial redemption of Units that would reduce the net asset value of such limited partner's unredeemed Units, as of the effective date of the redemption, to less than $5,000,000 or the amount of such limited partner's initial investment, whichever is *less*. Requests for redemption must be made by letter in a form acceptable to MSCM and must be received by MSCM at its offices at least two full business days prior to the effective date of the redemption.

In addition, MSCM may, in its sole discretion as general partner, require any limited partner, including a Plan, to redeem all of its Units or a portion of such Units upon written notice to such limited partner. No fee or other charge is payable by a limited partner, including a Plan, upon redemption of its Units. It is represented that any distributions to a limited partner from the Partnership in redemption of Units have been and will be made in cash.

16. It is represented that the requested exemption is protective of the rights of the participants and beneficiaries of affected Plans in that the decision to invest in the Partnership has been and will be made by a Plan Fiduciary who is independent of MSCM and its affiliates. In this regard, such Plan Fiduciaries retain complete discretion with respect to transactions initiated by a Plan investor involving the acquisition or redemption of Units. In addition, investors in the Partnership are furnished with audited financial statements and periodic reports that enable the Plan Fiduciaries to monitor the investment activities of the Partnership and permit such parties to discharge their oversight responsibilities.

Further protections are afforded by appropriate limitations which are placed on Plan investment in the Partnership. In this regard, no single Plan investor is permitted under any circumstances to acquire or hold an amount of Units which causes the investment by such Plan to exceed 20 percent (20%) of the total assets of the Partnership. In addition, at the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired and held by such Plan has not and will not exceed 10 percent (10%) of the total assets of such Plan.

17. The Applicants maintain that the terms and conditions of this proposed exemption provide additional safeguards for the protection of Plans which invest in the Partnership. In this regard, as a condition of this exemption, MS&Co and its affiliates have agreed that the Partnership has not invested and will not invest in any entity in which MS&Co or any of its affiliates has an ownership interest. In addition, the Partnership has not engaged and will not engage in swaps transactions, as defined in Section III (d) above, nor does the Partnership anticipate making any investment in U.S. or off-shore funds. Furthermore, it is represented that the Partnership does not anticipate making any equity investments in entities for which a party in interest with respect to any Plan invested in the Partnership has an ownership interest.

18. The Applicants represent that the requested exemption would be administrative feasible, because the transactions involved have been and will be well-documented through professionally maintained books and records which are subject to government review and independent, certified audits. As such, it is represented that the transactions can be readily monitored to ensure compliance with the terms of the exemption. In addition, the Applicants have borne and will bear all of the costs of the exemption applications and will be responsible for the costs of notifying interested persons.

19. It is represented that the requested exemption is in the interest of the affected Plans (and their participants and beneficiaries) in that the Partnership provides Plans with the type of investment medium and risk factors that such Plans desire in their investment portfolios.

Moreover the transactions are in the interest of the Plans which invest in the Partnership, because no placement fee or other sales charge has been or will be payable by the Partnership or by investors in connection with the offering of the Units. In addition, Plans have been and will be permitted to redeem their investments in the Partnership upon reasonably short notice, without the payment of fees or penalties of any sort. In this regard, it is represented that MSCM, MSAM, MS&Co, the MS Group or their affiliates do not receive any fees in connection with the acquisition or redemption of Units by Plan investors.

20. In summary, it is represented that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The participation by Plans in the Partnership has been and will be approved by Plan Fiduciaries prior investment by Plans in the Partnership;

(b) The Applicants have instituted and maintained and will institute and maintain a written procedure and records establishing criteria for determining that the Plan Fiduciaries are independent of the Applicants and their affiliates and are sufficiently knowledgeable to make an informed decision regarding the investment by Plans in the Partnership;

(c) A Plan Fiduciary maintains complete discretion with respect to acquiring or redeeming Units in the Partnership on behalf of a Plan;

(d) Neither MSCM nor its affiliates has any discretionary authority or control with respect to the investment of assets of the Plans in Units of the Partnership nor renders investment advice with respect to the investment of those assets;

(e) No Plan has acquired and held or will acquire or hold Units in the Partnership that represents more than 20 percent (20%) of the assets of the Partnership;

(f) At the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired or held by such Plan has not and will not exceed 10 percent (10%) of the assets of such Plan;

(g) The terms of each acquisition or redemption of Partnership Units has been and will be at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party;

(h) No Plan has paid or will pay a fee or commission by reason of the acquisition or redemption of Partnership Units;

(i) The total fees paid to MSCM or their affiliates with respect to services rendered have constituted and will constitute no more than reasonable compensation, within the meaning of sections 408(b)(2) and 408(c)(2) of the Act;

(j) Only Plans with assets having an aggregate market value of at least $25 million have been and will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the $25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust.

(k) The Applicants have made and will make periodic written disclosures to Plans with respect to the financial condition of the Partnership;

(l) The Partnership has not engaged and will not engage in swaps transactions, as defined in Section III(d) above;

(m) The Partnership has not invested and will not invest in any entity in which MS&Co or any of its affiliates has an ownership interest;

(n) Affiliates of MSCM have not invested in and will not invest in the Partnership;

(o) The non-U.S. commodity trading activities of the Partnership has been and will be limited to the LME;

(p) The Applicants have not accepted and will not accept subscriptions by Plans which permit participants to exercise control over the decision to acquire or redeem Units; and

(q) As of the effective date of this exemption and thereafter, MSCM has maintained and shall maintain for a period of time the records necessary to enable certain persons to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption will include prospective Plan investors, and Plan Fiduciaries of Plans which have already invested in the Partnership. Because the Applicants are uncertain as to which Plans will invest in the Partnership, the Department has determined that the only practical form of providing notice to interested persons of the pendency of this proposed exemption is the distribution by the Applicants of a copy of the Notice, as published in the **Federal Register**, and a copy of the supplemental statement, in the form set forth in the Department's regulations under 29 CFR § 2570.43(b)(2) to any Plan investors who at the time the Notice is published are interested in investing in the Partnership, and to the fiduciaries of all Plans that are invested in the Partnership at the time the Notice is published. Such distribution will be effected by first-class mail within fifteen (15) days of the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

National Rural Utilities Cooperative Finance Corporation (CFC), Located in Washington, D.C.

[Application No. D–10394]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. If this proposed exemption is granted, effective November 18, 1997, the restrictions of sections 406(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions relating to the refinancing by CFC of certain rural utility cooperative loans made to the Kansas Electric Power Cooperative, Inc. (KEPCO), and certain notes issued by KEPCO in connection with such loans which are assigned to trusts for which CFC acts as servicer, and certificates evidencing interests in such trusts:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between CFC or an underwriter and an employee benefit plan when CFC, the underwriter, or the trustee is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates;

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2); and

(4) The purchase by CFC of existing notes issued by KEPCO from the existing trusts and the contribution by CFC of new notes to new trusts pursuant to the refinancing of KEPCO's existing loans on the scheduled refinancing date (i.e. December 18, 1997).

B. If the proposed exemption is granted, effective November 18, 1997, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding trust agreement; and

(2) The trust agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[9]

C. If this proposed exemption is granted, effective November 18, 1997, the restrictions of sections 406(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates issued pursuant to this proposed exemption or issued pursuant to Prohibited Transaction Exemption 89–93 (PTE 89–93, 54 FR 45816, October 31, 1989).[10]

Section II—General Conditions

A. The relief described under Section I of this proposed exemption will be available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Ratings Service (S&P's) or Moody's Investors Service, Inc. (Moody's; together, the Rating Agencies);

(4) The trustee is not an affiliate of any other member of the Restricted

[9] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

[10] PTE 89–93 permits, as of July 22, 1987, certain transactions between CFC and employee benefit plans where CFC may be deemed to be a party in interest with respect to the plans as a result of providing services to a trust in situations where the assets of the trust are considered to be ''plan assets'' as a result of the plans acquiring significant ownership interests in the trust in the form of pass-through certificates.

Group. However, the trustee shall not be considered to be an affiliate of CFC, as servicer, solely because the trustee has succeeded to the rights and responsibilities of CFC pursuant to the terms of a trust agreement providing for such succession upon the occurrence of one or more events of default by CFC;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by CFC, as sponsor, pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by CFC, as servicer, represents not more than reasonable compensation for CFC's services under the trust agreement and reimbursement of CFC's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) Any swap transaction entered into by KEPCO which is assigned to a trust is entered into with a bank or other financial institution of high credit standing, initially Morgan Guaranty Trust Company of New York (Morgan), with a credit rating of at least AA or an equivalent rating from the Rating Agencies;

(8) The bank or other financial institution acting as the swap counterparty to the trust is required, if there is an adverse change in such counterparty's credit rating, to either: (i) Post collateral with the trustee of the trust in an amount, determined daily, equal to all payments owed by the counterparty if the swap transaction were terminated; or (ii) find a replacement swap counterparty for the trust, within a specified period under the terms of the swap agreement with the trust, which has a credit rating of at least AA or an equivalent rating from the Rating Agencies; provided that if the swap counterparty fails to abide by its obligations under either (i) or (ii) above, the swap agreement shall terminate in accordance with the rights and obligations of each counterparty under the terms thereof, which shall be enforced by the trustee to protect the rights of certificateholders of such trust;

(9) Each swap transaction between a trust and Morgan, or other swap counterparty, in connection with the refinancing of KEPCO's loans requires payments to be made to the trust monthly (or at such other times as required under the swap agreement) and requires payments to be made by the trust no less frequently than semi-annually, but in no event shall the trust be obligated to make payments to a swap counterparty more frequently than those which it is entitled to receive from a swap counterparty;

(10) The certificateholders have the right to exit the transaction by tendering the certificates to an underwriter (initially, Alex. Brown & Sons, Inc.) for purchase at par (plus accrued interest) on seven (7) days' notice;

(11) The U.S. Government guarantees the payment of principal and interest on the loans made by CFC to KEPCO;

(12) The purchase of notes issued by KEPCO from the existing trusts is for a price which is at least equal to the outstanding principal balance of such notes, plus accrued (but unpaid) interest, at the time of the scheduled refinancing of the loans made by CFC to KEPCO (i.e. December 18, 1997); and

(13) The certificates are not sold to any plans established and maintained by KEPCO or CFC, or to plans for which any other member of the Restricted Group (as defined in Section III.E. below) is an investment fiduciary for the assets of the plan that are to be invested in the certificates.

B. Neither CFC nor the trustee shall be denied the relief that would be provided under Section I of this proposed exemption if the provision of Section II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that: (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6) above.

Section III—Definitions

For purposes of this proposed exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust.

For purposes of this proposed exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust, and consists solely of:

(1) One or more notes issued by KEPCO which shall be guaranteed as to payment of principal and interest by the U.S. Government, acting through the U.S. Department of Agriculture's Administrator of the Rural Utilities Service (RUS), including fractional undivided interests in any such obligations;

(2) Property which has secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the trust agreement, and rights under any insurance policies, third-party guarantees, swap agreements, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

C. *Underwriter* means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue ''asset-backed'' pass-through securities to plans, that is similar in format and structure to this proposed exemption (the Underwriter Exemptions); [11] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

E. *Restricted Group* with respect to a class of certificates means:

[11] For a listing of the Underwriter Exemptions, see Section V(h) of PTE 95–60, 60 FR 35925, July 12, 1995.

(1) Each underwriter/remarketing agent;
(2) The trustee;
(3) CFC;
(4) KEPCO;
(5) The swap counterparty/liquidity provider; or
(6) Any affiliate of a person described in subsection E.(1)–(5) above.

F. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

G. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

H. A person will be *independent* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

I. *Sale* includes the entrance into a forward delivery commitment (as defined in subsection J. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of this delivery, all conditions of this proposed exemption applicable to sales are met.

J. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

K. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

L. *Trust Agreement* means the agreement or agreements among KEPCO, CFC and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, *Trust Agreement* also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

M. *RUS* means the U.S. Department of Agriculture, acting through the Administrator of the Rural Utilities Service or any successor to the guarantee obligations of such organization.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term ''Underwriter Exemption'' as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of November 18, 1997.

Preamble

On October 31, 1989, the Department granted an individual administrative exemption under section 408(a) of the Act to CFC (PTE 89–93) for several prohibited transactions relating to CFC's role as a financial intermediary in the refinancing of various loans to rural utility cooperatives. CFC now proposes that two of the loans involving KEPCO that were refinanced using the structure involved in PTE 89–93 be refinanced through a new series of transactions. CFC requests a new individual exemption for these refinancing transactions.

CFC states that the restructured KEPCO loans and the trust structure through which interests in these loans will be offered to institutional investors, including employee benefit plans, are in many respects similar to the transactional structure presented in PTE 89–93. However, under the new refinancing structure, the interest rate on the trust certificates will be a variable rate rather than a fixed rate guaranteed by the U.S. Government. The floating rate will be paid through an interest rate swap transaction between the trust and a bank or other financial institution acting as a swap counterparty (initially, Morgan). Thus, the variable rate on the certificates will not be guaranteed by the U.S. Government, although if the bank fails to make the variable rate payments, as required, the fixed rate guaranteed payments on the notes will be applied to the variable rate payments due on the certificates.

In addition, the new exemption requested by CFC has been expanded to include: (i) The purchase by CFC of the existing KEPCO notes and the contribution of amended KEPCO notes to the new trusts; and (ii) the servicing, management and operation of the trusts in a manner that is generally the same as the relief provided by the Department in other exemptions involving asset-backed securities (i.e., the Underwriter Exemptions).

Summary of Facts and Representations

1. The Applicant. CFC is a tax-exempt, not-for-profit cooperative association organized in 1969 under the laws of the District of Columbia. CFC was established by its members to provide them with a source of financing to supplement the loan programs of RUS (which was formerly known as the Rural Electrification Administration (REA)), a guarantor of loans made to rural electric utilities. CFC is a finance company that makes loans to its rural utility system members to enable them to acquire, construct and operate electric distribution, generation, transmission and related facilities. Most CFC long-term loans to its members are made in conjunction with concurrent loans from RUS and are secured equally and ratably with RUS' loans by a single mortgage. The principal and interest obligations under CFC's loans are guaranteed by RUS (the RUS Guarantee).

CFC also provides guarantees for tax-exempt financings of pollution control facilities and other properties constructed or acquired by its members, and provides guarantees of other debt in connection with certain leases and other transactions of its members. CFC presently has loans outstanding to its members in the aggregate principal amount of approximately $8.0 billion and has guaranteed on behalf of members an additional $2.3 billion in obligations. CFC acts as the servicer under six trusts that were established in 1988 to refinance certain rural utility cooperative loans guaranteed by REA in transactions eligible for the exemption provided by PTE 89–93. CFC also provides financial advisory services to its members.

As of May 31, 1996, CFC's 1051 members were generally non-profit cooperative electric utilities and service organizations and represented approximately 95 percent of the total number of such entities in the United States. As of December 31, 1995, CFC's member systems owned approximately $66.5 billion (before depreciation of $19.4 billion) in total utility plants and

equipment. Funds for CFC's programs are derived primarily from the sale to its members of its subordinated debt, the sale of collateral trust bonds, medium-term notes and commercial paper in the capital markets and from retained earnings. As of May 31, 1996, outside investors held approximately $1 billion of CFC collateral trust bonds, $604 million of CFC medium term notes and $4.7 billion of CFC commercial paper. CFC has approximately $1.0 billion principal amount of bonds listed on the New York Stock Exchange and registered under Section 12(b) of the Securities Exchange Act of 1934.

In the refinancing transactions that are the subject of this proposed exemption, CFC will act as the servicer of the new trust that will be established for purposes of holding the note or notes (with the RUS Guarantee) that are issued by KEPCO, a rural utility cooperative (KEPCO Notes). In addition, there will be a fixed to floating interest rate swap entered into between KEPCO and Morgan Guaranty Trust Company of New York (Morgan), a financial counterparty of high credit standing. The interest rate swap will be assigned to the trust by KEPCO. CFC will service the KEPCO Note(s) and the RUS Guarantee in accordance with the terms and conditions of the trust agreement (the Trust Agreement) under which the trust (the Trust) will be established.

2. The Trustee. The Trustee, which is The First National Bank of Chicago (First Chicago), is the legal owner of the assets in the Trust. The Trustee is also a party to, or beneficiary of, all the documents and instruments deposited in the Trust. The Trustee is responsible for enforcing all the rights created by the Trust in favor of the certificateholders. In the proposed transactions, the Trustee will be an independent entity and, therefore, will be unrelated to CFC, KEPCO, the swap counterparty and the underwriter. The Trustee will monitor and administer the swap agreement that will be assigned to the Trust.

CFC represents that the Trustee will be a substantial financial institution or trust company experienced in trust activities. The Trustee receives a fee for its services, which will be specified in the trust agreement and will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

3. The Underwriter. It is anticipated that the certificates will be registered under the Securities Act of 1933 and will be sold in a public offering on a firm commitment basis. Each underwriter will be an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue so-called ''asset-backed'' pass-through securities to plans (an Underwriter Exemption), an affiliate of such entity, or a member of an underwriting syndicate of which such entity is a manager or co-manager (see Section III.C above). The lead underwriter will act as the remarketing agent (Remarketing Agent) with respect to the certificates. If the certificates are sold to institutional investors in a private placement under Section 4(2) of the Securities Act and Rule 144A thereunder, the registered broker-dealer acting as placement agent will also act as the Remarketing Agent with respect to the certificates. The role of the Remarketing Agent is described further below.

4. The Swap Counterparty. The swap counterparty will be a bank or financial institution of high credit standing with a credit rating of at least AA or an equivalent rating from the Rating Agencies. As noted earlier, initially the swap counterparty will be Morgan. Morgan will continue to be the swap counterparty unless there is an event, such as a credit rating downgrade of Morgan, which requires a replacement of the swap counterparty under the terms of the swap. Thus, if there is such an adverse change in Morgan's credit rating, the swap agreement will require Morgan to either: (i) post collateral with the Trustee of the Trust in an amount, determined daily, equal to all payments owed by Morgan if the swap transaction were to be terminated by KEPCO; or (ii) find a replacement swap counterparty for the Trust, within a specified period, which has a credit rating of at least AA or an equivalent rating from the Rating Agencies. Otherwise, the swap agreement will terminate in accordance with its terms and the Trustee will be responsible for enforcing all rights created in favor of the certificateholders of the Trust.

The Subject Transactions

5. The proposed transactions for which exemptive relief is requested are described by the Applicant in the context of certain refinancing arrangements involving loans that were made by CFC to KEPCO (*i.e.* Kansas Electric Power Cooperative Inc). These refinancing transactions were initiated with the cooperation of the U.S. Department of Agriculture, acting through the Administrator of RUS. The Applicant represents that the subject transactions have been designed to further a U.S. Congressional policy to facilitate the reduction of the financing costs for rural electric power cooperatives and to reduce the U.S. Government's possible exposure as the guarantor of the debt of such cooperatives.

6. In 1988, KEPCO had outstanding certain loans from the U.S. Federal Financing Bank (the FFB Loans) which were guaranteed by RUS (then, the REA). Pursuant, to Section 306A of the Rural Electrification Act of 1936, as amended (the RE Act) and the implementing regulations thereunder (the Regulations), the FFB loans were refinanced in the following manner.

First, CFC loaned KEPCO the amount necessary to prepay the FFB Loans pursuant to a Loan Agreement, dated as of February 15, 1988 (the Loan Agreement). To evidence its repayment obligations to CFC, KEPCO executed three lender loan notes (the Notes). Then, CFC deposited each of the three Notes in a separate grantor trust—Trust K–1, Trust K–2, and Trust K–3 (collectively, the 1988 Trusts), pursuant to three Trust Agreements between CFC, KEPCO and First Chicago, as Trustee. The original REA guarantee of the FFB Loans (the Guarantees) was transferred to each of the Notes before they were deposited in the 1988 Trusts.

The obligations of (i) CFC to service the Notes while they were in the 1988 Trusts, (ii) the U.S. Government acting through the Administrator of the REA, as guarantor, to guarantee payment of principal and interest (as defined in the Loan Agreement) on the Notes under the Guarantees, and (iii) the Trustee with respect to the Guarantees, were contained in a Loan Guarantee and Servicing Agreement dated February 15, 1988 (the Loan Guarantee Agreement). Trust K–1, Trust K–2, and Trust K–3 issued certificates of beneficial interest in the assets of the 1988 Trusts (the Series 1988 Certificates) to CFC as depositor of the 1988 Trusts. CFC then sold the Series 1988 Certificates (other than from Trust K–3) to investors pursuant to a registered public offering of the Series 1988 Certificates. The Applicant states that these transactions were the subject of the relief provided by PTE 89–93, and similar refinancing transactions were effected for other rural electric cooperatives.

Note One and Note Two (the Outstanding Notes), which were deposited in Trust K–1 and Trust K–2, respectively, will mature on December 4, 2002 and December 4, 2017, respectively.[12] Pursuant to the terms of the Loan Agreement, Note One and Note

[12] Note Three, originally deposited in Trust K–3, matured by its terms on December 4, 1988, and the certificates representing ownership interests in Trust K–3 were redeemed and Trust K–3 was terminated by the Trustee.

Two will become available for purchase at the election of KEPCO by a purchaser designated by KEPCO on any business day on or after the day immediately prior to December 15, 1997. The Series 1988 Certificates representing ownership interests in Trust K–1 and Trust K–2 are subject to purchase or redemption upon the prepayment or purchase of the Outstanding Notes.

7. The Proposed Refinancing Transaction. KEPCO and RUS are proposing to refinance the Outstanding Notes using the transactions described below. KEPCO will redeem the outstanding Series 1988 Certificates by exercising, on December 18, 1997 (the Refinancing Date), the right given in the Loan Agreement to have the Outstanding Notes purchased by CFC at a specified premium over par [13] (plus accrued interest), and the Outstanding Notes will thereafter be amended (the Amended Outstanding Notes) to reduce the guaranteed interest rate payable by KEPCO or by RUS, as guarantor of the Outstanding Notes.

CFC will direct the Trustee (i.e. First Chicago), as trustee of Trust K–1 and Trust K–2, to terminate Trust K–1 and Trust K–2 after the owners of the Series 1988 Certificates are paid in full. The Trustee will be directed to transfer the Amended Outstanding Notes, with the Guarantees attached, to a single new grantor trust (the Series 1997 Trust) established pursuant to the Trust Agreement. The Trustee of the Series 1997 Trust will be First Chicago.

This refinancing structure was designed to lock in current interest rates for new loans to KEPCO as of the preliminary closing date for such refinancing (December 20, 1996), instead of waiting until the actual Refinancing Date (December 18, 1997) when rates may be higher. In particular, KEPCO has entered into a forward interest rate swap agreement (the Swap Agreement) with Morgan as the swap counterparty. KEPCO will assign its right to receive and make payments under the Swap Agreement, effective as of the Refinancing Date, to the Trustee for the Series 1997 Trust (i.e. First Chicago). Morgan is currently rated AAA by S&P and Aa1 by Moody's. The Swap Agreement will require Morgan to post collateral with the Trustee, for the benefit of certificate-holders, if Morgan's credit ratings are reduced to below AA or an equivalent rating by the Rating Agencies during the term of the Swap Agreement. Such collateral must be in the form of highly stable and liquid fixed-income securities, such as short-term debt securities issued and/or guaranteed by the U.S. Government or an agency or instrumentality thereof or debt securities issued by non-U.S. Government entities which have credit ratings comparable to those of the certificates. The amount of such collateral will be determined daily and will be equal to all payments owed by Morgan under the Swap Agreement in the event the swap were terminated.

Pursuant to the terms of the Swap Agreement, KEPCO will agree to pay a fixed rate of interest to Morgan on each December 4th and June 4th following the Refinancing Date until the maturity of the Amended Outstanding Notes. In return, Morgan will agree to pay to KEPCO a variable rate of interest at the times interest is payable on the Series 1997 Certificates. As noted earlier, KEPCO will assign its right to receive and make payments under the Swap Agreement to the Trustee on the Refinancing Date. On such date, CFC will deposit the Amended Outstanding Notes, with the RUS Guarantees attached, into the Series 1997 Trust. The Series 1997 Trust will issue certificates of beneficial interest (the Series 1997 Certificates) which will have interest distributable to holders of the Series 1997 Certificates (the Series 1997 Certificateholders) at a variable market rate of interest. The variable market rate will be initially set by the Remarketing Agent, and reset weekly by the Remarketing Agent, based on an independent index for 30-day commercial paper known as the H.15 Index, which is compiled daily by the New York Federal Reserve Bank. The variable rate of interest on the Series 1997 Certificates will determine the variable rate of interest payable to the Trustee by Morgan pursuant to the Swap Agreement, which payments will be distributed monthly to the Series 1997 Certificateholders, or at other times as set forth in the Series 1997 Trust Agreement. The initial variable rate on the certificates will be known to investors, including plans, approximately one week before the Refinancing Date.

When installments or payments are made by KEPCO on the Amended Outstanding Notes, the funds are placed in a segregated account established in the name of the Trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the Trustee. However, the account's assets are invested at the direction of CFC in short-term securities described in the Trust Agreement which have received a rating comparable to the rating assigned to the certificates. In addition, CFC will furnish a report on the operation of the Trust to the Trustee on a monthly basis.

Because of the structure of the refinancing, the credit behind the Series 1997 Certificates will be bifurcated. First, if KEPCO fails to pay the Trustee any amounts on the KEPCO Notes, Series 1997 Certificateholders will look to the guarantee provided by the U.S. Government (acting through RUS) for payment of principal, which will continue to be distributed to Series 1997 Certificateholders annually each December 15. Second, Series 1997 Certificateholders will look to the credit of Morgan for the variable rate payments of interest to be made on the Series 1997 Certificates.[14] If Morgan fails to make any variable rate payment when due, amounts received by the Trustee from KEPCO (or RUS as guarantor) for interest on the Amended Outstanding Notes, less a servicing fee payable to CFC, will become payable, to the extent of the amount of the defaulted payment, to the Series 1997 Certificateholders. Morgan, or another financial institution of comparable credit standing selected by Morgan, will provide liquidity support for the tender rights (Tender Rights) that attach to the Series 1997 Certificates. The Tender Rights will enable certificateholders to sell the Series 1997 Certificates back to the Remarketing Agent at any time upon seven (7) days notice.

As noted earlier, the documentation executed and delivered for the KEPCO refinancing will be executed in three closings:

(i) The preliminary closing on December 20, 1996, at which time most of the operative documents were executed and delivered (the Preliminary Closing);

(ii) The Deposit Date closing on November 18, 1997 (the Deposit Date Closing), at which time the offering documentation was delivered and CFC deposited the purchase price for KEPCO's Outstanding Notes with the Series 1988 Trustee and gave advance notice that the purchase is to occur on December 18, 1997; and

(iii) The Refinancing Date closing on December 18, 1997, at which time KEPCO's Outstanding Notes will be purchased by CFC from the 1988 Trusts

[13] This premium amount will be distributed to the certificateholders of the Series 1988 Certificates issued by Trust K–1 and Trust K–2.

[14] Morgan has the obligation to continue to make timely payments under the Swap Agreement even in the event of a default by KEPCO. In such instances, Morgan will look to the guarantee provided by the U.S. Government for future payments of interest on the Amended Outstanding Notes, which the Trustee will use to make the semi-annual payments to Morgan under the Swap Agreement.

and the amended Outstanding Notes will be delivered to the Trustee of the Series 1997 Trust, after which the Series 1997 Certificates will be issued and sold to investors.

The Applicant states that in order to eliminate or to minimize creditors' risks, forward purchase transactions are structured so that as little as possible is left to the discretion of the parties after the first commitment is made. Consequently, virtually all of the binding commitments for the proposed refinancing were made at the Preliminary Closing. The fixed rate payable to Morgan by KEPCO under the Swap Agreement (i.e. 7.654 percent per annum) was established at the time of the signing of such Agreement. That fixed rate, plus the servicing fee payable to CFC, will determine the new guaranteed interest rate on the Amended Outstanding Notes, effective upon the sale of the Certificates to the Underwriters on the Refinancing Date.

KEPCO and CFC entered into a First Amendment to the Loan Agreement at the Preliminary Closing which obligates CFC, subject to certain conditions, to provide the funds for the purchase of Note One and Note Two on the Deposit Date Closing. In addition, the First Amendment to the Loan Agreement contains the operative amendments to the Loan Agreement, which will serve to reduce the interest rate on the Outstanding Notes and to remove any call protection or call premium from the Outstanding Notes. The amendments will become effective on the Refinancing Date. However, if upon issuance of the Certificates to CFC the Certificates are not sold to the Underwriter for any reason, CFC will hold the Certificates and receive the existing fixed interest rate on the Amended Outstanding Notes. Pursuant to a separate agreement, KEPCO will make up any loss CFC may incur in funding the carrying of the Certificates and will receive a credit for any ''float'' CFC realizes while holding the Certificates. The RUS does not guarantee any such additional payments to CFC that may be required from KEPCO.

8. The Sale of the Certificates. At the Preliminary Closing, KEPCO and CFC entered into a forward certificate purchase agreement with Alex. Brown & Sons, Inc. (Alex Brown), as Underwriter of the Series 1997 Certificates, pursuant to which KEPCO and CFC obligated themselves, subject to certain conditions, to sell the Series 1997 Certificates to Alex Brown on the Refinancing Date. Alex Brown committed to purchase and resell the Series 1997 Certificates at par on such date in a firm commitment public offering registered with the SEC. The prospectus (or private placement memorandum if the sale to investors is converted to a private placement under SEC Rule 144A) for the Certificates will provide detailed information about the Amended Outstanding Notes, the RUS Guarantee, the Trust, the Swap Agreement, and the rights and entitlements of the Series 1997 Certificateholders. The compensation payable to CFC, as servicer of the Trusts, and to the Trustee will be set forth in the Trust Agreement and will be described in detail in the prospectus relating to the Series 1997 Certificates.

The Applicant states that once the lower fixed guaranteed interest rate on the Amended Outstanding Notes is established and the Series 1997 Certificates are sold to investors, neither the KEPCO nor RUS will ever have to pay more than such rate. Morgan, as the swap counterparty, will be paying the ''market rate'' on the Series 1997 Certificates for the remaining terms of the Notes. Consequently, Morgan has an interest in insuring that the Series 1997 Certificates are sold at an appropriate market rate and that such rate is reset weekly at an appropriate market rate. If investors (including plans) are not satisfied with the variable interest rates paid on the Series 1997 Certificates, as reset weekly by the Remarketing Agent, then such Certificateholders may exercise their Tender Rights to require the Remarketing Agent to repurchase the Certificates at par plus accrued interest. In such instances, Morgan or another qualified financial institution of comparable credit quality will stand behind the Remarketing Agent with liquidity support to enable that entity to honor the Tender Rights.

The rate payable for the Series 1997 Certificates will be determined by a Remarketing Agent (initially, Alex Brown) as being the minimum rate of interest necessary, in the Remarketing Agent's judgment, to enable the Remarketing Agent to sell the Series 1997 Certificates at par. As noted above, when the Series 1997 Certificates are in the ''weekly rate mode'', the Certificateholders will have the right at all times to exercise their Tender Rights to tender their Certificates for repurchase by the Remarketing Agent at par (plus accrued interest) on any business day upon seven (7) days notice.[15] CFC, as servicer, will verify and confirm to the Trustee the information provided by Morgan and the Remarketing Agent for the variable interest rate payments.

Although the Series 1997 Trust Agreement permits the swap counterparty (i.e. Morgan) and the Remarketing Agent (i.e. Alex Brown) to lengthen the interest reset period from seven (7) days (and the right to tender Certificates would exist only at the end of such longer reset period), any such change will result in a mandatory repurchase of all outstanding certificates (at par plus accrued interest) before it becomes effective. Thus, any Certificateholders that want to continue to invest in the Certificates under the new conditions will have to make an affirmative decision to do so. As stated above, in order to assure the operation of these provisions regarding Tender Rights of Certificateholders, KEPCO will enter into a liquidity protection agreement with Morgan pursuant to which Morgan will agree to provide, or cause another qualified financial institution of comparable credit quality to provide, a liquidity facility during the term of the Swap Agreement.

The Swap Agreement will be in effect until the maturity of the Series 1997 Certificates. After the Refinancing Date, the financial condition or performance of KEPCO will not affect the requirement of Morgan's performance under the Swap Agreement. However, KEPCO and RUS (should RUS become the payor of the Amended Outstanding Notes pursuant to the Guarantees) will have the right to terminate the Swap Agreement and prepay or purchase the Amended Outstanding Notes at any time after the Refinancing Date (after providing notice as specified in the Loan Agreement and the Trust Agreement). There are no prepayment penalties attached to KEPCO's right to prepay the Amended Outstanding Notes. However, with respect to the resulting termination of the Swap Agreement, prior to prepaying or purchasing the Amended Outstanding Notes, any termination payment owing under the Swap Agreement must be paid by KEPCO (or RUS). Consequently, depending on market conditions and interest rates, KEPCO (or RUS) could be obligated to make a payment to Morgan or could be entitled to receive a

[15] As noted earlier, the 7-day reset by the Remarketing Agent will be priced based on the H.15 Index, a 30-day commercial paper index, which is compiled daily by the New York Federal Reserve Bank. The H.15 Index is readily available to fixed income investors through data services, conversations with broker-dealers, on-line reports, and other transactions in which such investors participate. This information would be used by certificateholders on a continuous basis to determine both the anticipated level of repricing as well as to evaluate whether the repriced certificates continue to meet their investment needs.

payment from Morgan, in the event of termination of the Swap Agreement.[16]

The Applicant states that the refinancing is intended to emulate, as closely as possible, the 1988 refinancing, except that the certificates will have a variable rate of return. The parties to the 1997 transaction are the same as the parties to the 1988 transaction with the exception of Morgan and Alex Brown—the parties involved in making the Series 1997 Certificates available as variable rate securities. As with the 1988 refinancing, the Applicant anticipates that the Certificates will be acquired by employee benefit plans subject to the Act.

CFC is participating in this transaction to facilitate the refinancing of the existing loans (as evidenced by Note One and Note Two) to KEPCO under applicable U.S. Department of Agriculture regulations and guarantee programs. CFC does not intend to take a proprietary interest in the Amended Outstanding Notes. The purchase of the Amended Outstanding Notes by CFC and the contribution of such Notes to the Series 1997 Trust will occur virtually simultaneously and will be for the same consideration. CFC will continue to receive servicing fees for the Series 1997 Trust (as discussed below) and a fee for the 30-day period between its prepayment of the purchase price for the Amended Outstanding Notes and the closing of the sale of the Series 1997 Certificates to the Underwriters on the Refinancing Date.

The Series 1997 Certificates will have received one of the three highest ratings available from either S&P or Moody's, or both. The Applicant states that these ratings will be based, in part, on the RUS Guarantee and the high credit standing of Morgan as the swap counterparty and the liquidity provider.

In this regard, the entire KEPCO refinancing transaction (including the proposed swap transaction) has been reviewed by Moody's and S&P for the purpose of rating the certificates. S&P has concluded the following: (a) the long-term rating on the certificates would be the lower of (i) ''AAA'', based on the guarantee provided by the U.S. Government acting through the Administrator of the RUS, or (ii) the rating of the swap counterparty (i.e. Morgan, which is currently rated ''AAA''). The short-term rating on the certificates would be the short-term rating of the entity providing the standby certificate purchase agreement. This entity will be either Morgan or another financial institution that is rated P–1, the highest short-term credit rating available. Moody's has also concluded that the certificates would be rated Aa1 (long-term) and P–1 (short-term), based on the guaranty provided by the U.S. Government, the swap agreement with Morgan, and the standby certificate purchase agreement provided by either Morgan or another P–1 rated entity.

9. *Disclosure.* The prospectus (or private placement memorandum) to be issued in connection with the original issuance of the Series 1997 Certificates, will contain information material to a fiduciary's decision to invest in the Certificates, including:

(i) Information concerning the payment terms of, and the rating of, the Series 1997 Certificates;

(ii) A description of the operation of the Trust as a separate entity and of how the Trust was formed by CFC;

(iii) Identification of First Chicago as the independent trustee for the Trust;

(iv) A description of the assets contained in the Trust (i.e. the Amended Outstanding Notes, the RUS Guarantee and the swap, including their principal terms and their material legal aspects, as well as financial information regarding Morgan, as the swap counterparty);

(v) A description of CFC, its role in the refinancing and its role as the servicer of the Trust;

(vi) A description of the Trust Agreement, including a description of the procedures for collection of payments on the Notes, the payments to be made under the Swap Agreement and the procedures for making distributions to certificateholders; a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation that may be deducted from any payments before distributions are made to certificateholders; a description of periodic statements to be provided to the Trustee and provided to or made available to certificateholders by the Trustee; and a description of the events that constitute events of default under the Trust Agreement and a description of the Trustee's and the certificateholders' remedies with respect thereto;

(vii) A description of the RUS Guarantee;

(viii) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through certificates by a typical investor;

(ix) A general discussion of the fiduciary and prohibited transaction considerations that are to be taken into account by a fiduciary under the Act considering the purchase of the Series 1997 Certificates,[17] including a brief description of the exemption (if granted) and a discussion of the potential need for compliance by plan investors with certain prohibited transaction class exemptions issued by the Department in connection with the swap transaction;[18]

(x) A description of the underwriters' plan for distributing the pass-through certificates to investors, including the structure and operation of the variable interest rate reset mechanism; and

(xi) Information about the scope and nature of the secondary market for the certificates, the operation of the put rights, the role of the liquidity provider and financial information regarding the liquidity provider (which will be Morgan or a financial institution of comparable credit standing).

10. The RUS Guarantee. The Applicant states that RUS has endorsed on each Outstanding Note its guarantee of the timely payment of principal and interest on such Note and, on or before the Preliminary Closing, will have consented to an amendment of each Outstanding Note to lower the

[16] In no event will the Trust be obligated to make termination payments to Morgan, or another swap counterparty, in the event KEPCO purchases the Amended Outstanding Notes.

[17] The Department wishes to note that ERISA's general standards of fiduciary conduct would apply to the investment described in this proposed exemption, and that satisfaction of the conditions of this proposal should not be viewed as an endorsement of the investment by the Department. Section 404 of ERISA requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment transaction. The Department further emphasizes that it expects the plan fiduciary to fully understand the benefits and risks associated with engaging in a specific type of investment, following disclosure to such fiduciary of all relevant information. In addition, such plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

[18] See PTE 84–14, 49 FR 9494, March 13, 1984 (regarding transactions entered into for plans by a ''qualified professional asset manager'' or ''QPAM''), PTE 90–1, 55 FR 2891, January 29, 1990 (regarding transactions entered into by insurance company separate accounts), PTE 91–38, 56 FR 31966, July 12, 1991 (regarding transactions entered into by bank collective investment funds), PTE 95–60, 60 FR 35925, July 12, 1995 (regarding transactions entered into by insurance company general accounts), or PTE 96–23, 61 FR 15975, April 10, 1996 (regarding transactions entered into for plans by ''in-house'' asset managers). In this regard, the Department is not providing any opinion in this proposed exemption as to whether the conditions of such class exemptions would be met for a swap transaction between the Trust and Morgan, or any other bank or financial institution acting as a swap counterparty to the Trust.

guaranteed interest rate thereon and to make the other amendments described below for the servicing of the Outstanding Notes. The RUS Guarantee is a full faith and credit obligation of the United States of America. RUS will be required to pay the Trust the amount of any principal and interest not paid when due on an Outstanding Note within five business days of notice of such default from CFC, acting in its capacity as servicer.

11. Servicing of KEPCO's Loans. CFC will contract with RUS and the Trust to service the Amended Outstanding Notes, thereby establishing an agency relationship (as the ''Servicer'') with respect to the Trustee in a manner that complies with the RE Act and the Regulations and described in the terms of the Trust Agreement.

Under the Trust Agreement, the Trustee appoints the Servicer as its attorney-in-fact to prosecute any claims to enforce or collect on each Amended Outstanding Note and Guarantee. However, the Servicer as such attorney-in-fact may not rescind, cancel, release, waive or reschedule the right to collect the unpaid balance on any such Note from KEPCO or RUS. If a court holds that the Servicer is not entitled or able to enforce an Amended Outstanding Note or Guarantee, the Trustee, on behalf of the Trust, is obligated to take such steps as the Servicer deems necessary to enforce such Note or Guarantee.

In administering, servicing and enforcing an Amended Outstanding Note or Guarantee according to the terms of the Trust Agreement, the Servicer after a default in payment on such Note is obligated to exercise such of the rights and powers vested in it by the Trust Agreement and to use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Prior to a default in payment on an Amended Outstanding Note, the Servicer is obligated to perform only those duties that are specifically set forth in the Trust Agreement. The Servicer has no liability for any error of judgment made in good faith by it (unless it is proved that the Servicer was negligent in ascertaining the pertinent facts) or for any action it takes or omits to take in good faith in accordance with a direction received by it from the Trustee or the Certificateholders.

In addition to enforcing the Trustee's rights under the Amended Outstanding Note (including the RUS Guarantee) held by the Trust, CFC as the Servicer for the Trust is obligated to fulfill a number of administrative and notice functions under the Trust Agreement. For example, the Servicer is obligated to deliver a notice to KEPCO and the Trustee specifying the date any payment is due on the Note held by such Trust and the amount of such payment. The Servicer is responsible for notification of RUS of any default in the payment of interest and principal on the Amended Outstanding Note held in the Trust. The Servicer is obligated to submit to RUS reports assessing the causes behind, and seriousness of, the default. The Servicer is also obligated to notify RUS of any known violations, defaults or conditions which might lead to a default or violation by KEPCO under the Loan Agreement, the Loan Guarantee Agreement or an Amended Outstanding Note. The Servicer is further obligated to notify RUS of any redemption of the Amended Outstanding Note held by a Trust and to calculate the amount payable on such Note and the related Certificates pursuant to any redemption or purchase of such Note.

The Servicer will handle the billing of Note payments from KEPCO, and will notify RUS promptly of any default under a Loan and of adverse developments affecting KEPCO, but payments on the Note will be made directly to the Trustee and not to CFC. The Trustee will be responsible for monitoring and enforcing the Swap Agreement. In this regard, the Servicer will verify and confirm to the Trustee the information provided by Morgan and the Remarketing Agent with respect to the variable rate of return. The Servicer will also prepare for distribution by the Trustee to Certificateholders regular semiannual reports concerning distributions on the Certificates and its fees, as well as tax information required by Certificateholders. No less often than annually, an independent public accountant will audit the books and records of the Trust. Upon completion, copies of the auditor's reports will be provided to the Trustee.

12. Servicing Compensation. The Servicer will be compensated out of payments on the KEPCO Notes. The servicing fee (out of which the Servicer will pay the Trustee's fees and expenses) will total not more than approximately 1/10 of one (1) percent per annum of the principal amount of the Notes. Because the return to the certificateholders is based upon the floating rate payments made under the Swap Agreement, these reimbursements will not affect the payments to certificateholders.

The Servicer may transfer its duties and obligations with the consent of 51 percent of the certificateholders and the swap counterparty. The Servicer may also be terminated following certain defaults or events of bankruptcy relating to the Servicer. The insolvency of the Trustee or the Servicer will not affect the certificateholders' rights, because the Servicer will not hold any Trust assets, and assets held in a fiduciary capacity by the Trustee should not be subject to claims of the Trustee's general creditors.

13. Description of Certificates. Each Certificate will represent a fractional undivided interest in the Trust. The Certificates will be issued in denominations of $100,000 (and in integral multiples of $5,000 above such amount), and will not be divisible into certificates with original principal amounts below $100,000. The Certificates will be transferable, and may be listed on a national securities exchange. Payments on the Certificates will represent a pass-through of both (i) payments of principal received by the Trustee on the KEPCO Notes held by the Trust, and (ii) the payments to be made by Morgan under the Swap Agreement.[19] Interest on the KEPCO Notes will be payable semi-annually, whereas interest on the floating-rate Certificates will be paid monthly (or on such other periodic basis as may be reset in accordance with the Trust Agreement). Principal payments on both the KEPCO Notes and the Certificates will be payable annually for the period during which each Note amortizes.

The Certificates will be prepaid at any time a Note is prepaid. The Notes will be prepayable at the KEPCO's option in whole (but not in part) at any time at par. KEPCO will be required to accompany its notice of prepayment (to be given in advance in order to permit the Trustee in turn to notify certificateholders of the impending retirement of the Certificates) with cash

[19] It should be noted that the notional principal amount for the swap transaction between the Trust and Morgan, used to determine the payments to be made between the parties, initially will be $57,390,000. As principal payments on the KEPCO Notes are received by the Trustee and passed-through to the certificateholders, the notional principal amount for the swap transaction will be adjusted to equal the outstanding principal balance of the certificates. It should also be noted that, based on the confirmation statement submitted by Morgan, all payments made between the parties will be based on the applicable notional principal amount, the day count fractions, the fixed or floating rates (determined by objective third party sources) designated under the swap agreement, calculated on a one-to-one ratio and not on a multiplier of such rates or with formulas that produce leveraged amounts. However, because the payments will be made between the parties on different dates, there will be no netting of payments. Thus, both parties will be responsible for making the full payments that are due on the designated dates (i.e. semi-annually for KEPCO and monthly for Morgan).

equal to the amount that will be due on such Note at the time of prepayment. This procedure will assure that funds will be available for the prepayment of the Note at the appropriate time. These funds will be invested in obligations issued by the United States or in repurchase agreements.

With the exception of prepayments by KEPCO, all payments on the Note obligations are supported by the full faith and credit of the United States. If KEPCO defaults in making its payments or in its other obligations to RUS, RUS has the option either to pay under the RUS Guarantee principal and interest as they fall due on the KEPCO Note, to proceed against KEPCO and to assume KEPCO's obligations under the KEPCO Note or, if KEPCO could at that time make an optional prepayment of the KEPCO Note, to optionally prepay or purchase the Note. The Trustee (or the Servicer as its agent), and not the certificateholders, will enforce payments due on the KEPCO Notes (or the RUS Guarantee) and the Trustee will enforce payments due under the Swap Agreement. However, a specified percentage of certificateholders may direct the time, method and place of exercising any remedy available to the Trustee or the Servicer, subject to customary trust indenture exceptions. The Trustee may not resign until the Trust is liquidated and the proceeds distributed to certificateholders, unless a successor Trustee has been designated and has accepted such trusteeship.

14. Distributions for the Certificates. Scheduled distributions on the Certificates attributable to payments of principal on the KEPCO Notes will be made 11 days (in the case of regular payments of principal) following the corresponding payment on the Note. This interval will allow time for the Servicer to notify RUS if there is a default by KEPCO in making a payment on the Note and to permit the five business days that RUS has requested before it is obligated to make a payment under the guarantee to elapse before the payment date on the Certificates. As a consequence, if KEPCO defaults, the full faith and credit guarantee payment will fall due before the scheduled payment on the Certificates. As indicated above, if KEPCO elects to prepay its Loan, distributions on the Certificates will be made only after advance receipt of the amounts to be prepaid. This procedure will permit notice of the resulting distribution to be given to certificateholders.

During these periods pending distribution, payments on the KEPCO Notes received by the Trust will be invested at the direction of CFC, as servicer for the Trust, in: (i) obligations issued by the United States (and supported by its full faith and credit), or (ii) repurchase agreements with respect to such obligations, over-collateralized on a basis that will not result in a reduction in the ratings of the Certificates. All such investments must mature before the next scheduled distribution date on the Certificates. The obligations collateralizing the repurchase agreements in question would be marked to market on a daily basis and kept in the possession of the Trustee or in its control through book-entry, unless the Rating Agencies indicate that this is not necessary to maintain the Certificates' rating. The Applicant states that assuming all amounts then due on the KEPCO Notes have been paid in full, any yield on these investments will be returned to KEPCO (or to RUS to the extent of any unreimbursed payments on the RUS Guarantee). The Applicant states further that such yield will not flow through to the Servicer or the certificateholders, or increase the return on their investment, and the prospectus (or private placement memorandum) will make this clear to the certificateholders.

Other Information

15. The Applicant represents the proposed exemption (if granted) for plan investments in the Certificates and the participation by CFC in the refinancing program would be effective as of November 18, 1997, the Deposit Closing Date for the refinancing of KEPCO's existing loans. The plans affected by the requested exemption are those plans that will acquire and hold Certificates representing an interest in a trust established under a trust agreement as described herein, including any plans that own certificates for trusts that were established as a part of the 1988 refinancings. The Applicant states that the Certificates will not be sold to plans established by KEPCO or CFC, or to plans for which either the Trustee, the swap counterparty/liquidity provider, or the underwriter/remarketing agent (or any affiliate of any of the foregoing entities) is an investment fiduciary for the assets of the plan that are to be invested in the Certificates.

16. The Applicant represents that the Department's regulations defining *plan assets* for purposes of the prohibited transaction provisions of the Act [20] provide that a plan that acquires an equity interest in an entity, such as certificates of beneficial ownership in a grantor trust, will be required under certain circumstances to treat the underlying assets of the entity as assets of the plan for purposes of the Act. Generally, this ''plan asset look-through'' occurs if there is significant participation by benefit plan investors (i.e. 25 percent or more) and the class of equity interests in question are not: (i) held by 100 or more investors independent of the issuer and of each other, (ii) freely transferable, and (iii) either registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 (the '34 Act) or sold as a part of an offering pursuant to an effective registration statement under the Securities Act of 1933, and then timely registered under Section 12(b) or 12(g) of the '34 Act. In this regard, the Applicant states that although there will be no restrictions imposed on the transfer of the Certificates and CFC intends to cause the registration requirements to be satisfied, the Certificates may be held by fewer than 100 independent investors at the conclusion of the initial offering. Therefore, if benefit plan investors (including employee benefit plans covered by the Act, governmental plans, etc.) hold, in the aggregate, Certificates representing a 25 percent or greater interest in the Trust, the plan certificateholder's assets will be deemed to include assets of the Trust.

As discussed herein, CFC performs certain services for the Trust as agent for the Trustee according to the terms of the Trust Agreement. CFC will be compensated for such services out of interest payments on KEPCO's Note before payments are made by the Trust to Morgan under the Swap Agreement. The Trustee also has duties and responsibilities for the assets of the Trust for which it will be compensated. Therefore, if the assets of the Trust are deemed to be ''plan assets'' for the reasons discussed above, the activities of CFC for the Trust would cause it to become a service-provider to the participating plans.

The Applicant states that this ''service provider'' status gives rise to potential prohibited transactions between the participating plans and CFC. In addition, the ''plan asset look-through'' may create prohibited transactions between the participating plans and any other parties in interest with respect to such plans that have a relationship to the trust (i.e. members of the Restricted Group, as defined in Section III.E).

17. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because:

(a) The decision to acquire a certificate will be made on behalf of a

[20] See 29 CFR 2510.3–101.

plan by a fiduciary of the plan who is independent of CFC after receipt of full and detailed disclosure of all material features of the trust and the certificates, including all applicable fees and charges.

(b) The assets of the Trust (i.e. the notes, the RUS Guarantee and the Swap Agreement) are described to prospective purchasers of certificates. Neither CFC nor the Trustee has discretion to substitute assets once the Trust has been formed (except in the limited circumstances where KEPCO is required to obtain a substitute swap agreement from another financial institution of comparable credit quality).

(c) KEPCO's notes are guaranteed as to principal and interest by the United States of America and the certificates will be rated in one of the three highest rating categories by S&P's and/or Moody's.

(d) All actions by CFC and the Trustee with respect to the trust, the assets of the Trust, the certificates and certificateholders will be governed by the Trust Agreement, which will be available to plan fiduciaries for their review prior to the plan's investment in certificates.

(e) The certificates will bear a variable rate of return that will be generally reset weekly; any change in the reset period will require a new investment decision by the certificateholder because of the mandatory redemption (at par plus accrued interest) feature of the certificates.

(f) The variable rate should be closely related to a published independent index (e.g. the H.15 index for 30-day commercial paper, as compiled by the New York Federal Reserve Bank) so that it can be readily monitored by certificateholders. Given the historical range of reset rates, and the put and redemption features of the certificates, any adverse change in the variable rate would have only a de minimis impact on a plan investor's overall return on the certificates.

(g) Alex Brown, a currently identified underwriter, anticipates that it will make a secondary market in the certificates, and the certificateholders will have certain put rights (at par plus accrued interest) which are supported by a liquidity facility provided by a financial institution that is rated in one of the three highest rating categories by S&P's and/or Moody's.

(h) All fees and charges under the Trust and for the Certificates are fixed and reasonable and are disclosed to certificateholders.

(i) CFC and the Trustee will maintain books and records of all transactions which will be subject to annual audit by a certified public accountant.

(j) The certificates will be offered and sold in a public offering or an exempt private placement, with full disclosure in the prospectus or private placement memorandum.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption will include prospective plan investors, and fiduciaries of plans which have already invested in certificates of a trust which holds an existing KEPCO Note. Because CFC is uncertain as to which plans will invest in a new trust, the Department has determined that the only practical form of providing notice to interested persons is the publication of this notice of proposed exemption in the **Federal Register**. However, with respect to plans that are invested in a trust holding an existing KEPCO Note at the time this notice is published, CFC will distribute in redemption notices for the outstanding certificates of the existing trusts a statement that plan investors may request a copy of this notice of proposed exemption within 15 days of the receipt of the notice of redemption. CFC represents that transmittal of redemption notices will occur shortly after the publication of this notice of proposed exemption in the **Federal Register**.

Comments and requests for a public hearing are due within sixty (60) days following the publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Pentair Retirement Savings and Stock Incentive Plan (the Plan), Located in St. Paul, MN

[Application No. D–10472]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan (the Sale) of the Plan's remaining interest (the Interest) in two guaranteed investment contracts (the GICs) of Confederation Life Insurance Company (CL) to Pentair, Inc. (Pentair), the sponsoring employer and a party in interest with respect to the Plan; provided the following conditions were met:

(1) The Sale was a one-time transaction for cash;

(2) The Plan received no less than the fair market value of the Interests at the time of the Sale;

(3) The Plan and its participants and beneficiaries have not incurred any expenses or any losses from the Sale; and

(4) Any future distributions from the GICs that exceed the consideration paid by Pentair to the Plan for the Interests shall be paid to the Plan and allocated to the respective accounts of the affected Plan participants.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective on June 13, 1997.

Summary of Facts and Representations

1. Pentair, a Minnesota corporation and located in St. Paul, is a publicly held corporation whose stock is traded on the New York Stock Exchange. It is a diversified manufacturer and vendor of electrical and electronic enclosures, portable and stationary tools and equipment, water products, and sporting and law enforcement ammunition.

The Plan, established by Pentair on January 1, 1984, is a defined contribution plan that is intended to qualify under section 401(a) of the Code. The Plan includes a cash or deferred arrangement that is intended to qualify under section 401(k) of the Code.[21] As of December 31, 1996, the Plan had approximately 9,700 participants and total assets with a fair market value of approximately $270,000,000. The Plan provides for individual participant accounts and permits its participants to self-direct their respective accounts in the Plan (other than the ESOP part of the Plan) into various investment options pursuant to section 404(c) of the Act, including an investment option referred to as the Pooled Stable Return Trust (the PSR Fund), which acquires and holds a pool of fixed income investments. As of December 31, 1996, the PSR Fund held assets with a total fair market value of approximately $72,000,000.

Pentair, as named Plan fiduciary, delegates the administrative responsibilities of the Plan to a Plan

[21] A component of the Plan is an employee stock ownership plan (ESOP) of the stock bonus variety, with its assets held under a separate trust and invested in the stock of Pentair.

Committee (the Committee), currently comprised of Richard W. Ingman, Debby S. Knutson, John T. Moynihan, and Roy T. Rueb, each of whom is an employee of Pentair. Two of the members of the Committee, Richard W. Ingman and Roy T. Rueb (the Fund Trustees), are also the trustees of the PSR Fund.

2. Among the fixed income investments purchased by the Fund Trustees on behalf of the PSR Fund are the GICs, described as follows:

(a) Contract No. 62541 is a single deposit contract acquired from CL on July 26, 1991, for $3,500,000, with a maturity date on June 30, 1996, providing for a guaranteed rate of compound interest at 8.53 percent through maturity.

(b) GIC No. 62608 is a single deposit contract acquired from CL on January 22, 1992, for $5,000,000, with a maturity date on December 31,1996, and which provides for a guaranteed rate of simple interest at 7.21 percent through maturity.

3. On August 11, 1994, Canadian insurance company regulatory authorities seized the assets of CL because of serious liquidity problems confronting CL. On August 12, 1994 (the Seizure Date), the assets of CL located in the United States of America were seized by the Insurance Commissioner for the State of Michigan. On the Seizure Date, legal action was taken to freeze the operations of CL in the United States and to initiate a rehabilitation CL's operations in the United States. Pentair represents that, as of August 12, 1994, the book value of both of the GICs totaled $9,685,734.43 (the Seizure Date Values).[22] Pentair represents that as of the Seizure Date, GIC No. 62541 had a book value of $4,491,311.71 and GIC No. 62608 had a book value of $5,194,422.72, with the total representing approximately 11.7 percent of the total assets in the PSR Fund as of the Seizure Date. Immediately after the Seizure Date, the Fund Trustees took action to freeze a portion of the account balance of each participant account invested in the PSR Fund, and the frozen amount of each such account equaled the percentage of the total PSR Fund assets represented by the Seizure Date Value of the GICs, approximately 11.7% as of the Seizure Date.

4. Subsequent to the Seizure Date, a formal plan of rehabilitation of CL (the Rehab Plan) was developed which offered contract holders such as the PSR Fund the option of participation in the Rehab Plan, by receiving payments over several years, or nonparticipation in the Rehab Plan by receiving a lump sum settlement. The Rehab Plan was approved by rehabilitation authorities on October 23, 1996, and became final 21 days later, and the Fund Trustees elected that the PSR Fund participate in the Rehab Plan. The Fund Trustees represent that pursuant to the Rehab Plan, the Plan has already received from CL's available liquid assets in excess of 100 percent of the Seizure Date Values of the GICs, and that they anticipate from the Rehab Plan an eventual recovery of approximately 110% of the Seizure Date Values. Pentair represents that as of June 13, 1997, the Plan had received a total of $9,723,592 from the Rehab Plan with respect to its investments in the GICs, and that these funds were immediately invested in the PSR Fund's money market fund.

In addition to the funds realized from the Rehab Plan, the Plan has received funds from a state guaranty association. During development of the Rehab Plan, the State of Minnesota, through its Minnesota Life and Health Insurance Guaranty Association (MGA), accepted and confirmed guaranty coverage for the two GICs and thereby provided additional funds to compensate those affected Plan participants residing in Minnesota. Pentair represents that 62.221 percent of the PSR Fund's investment in the GICs was allocable to the participant accounts of Minnesota residents. Pentair represents that as of June 13, 1997, the Plan had received a total of $1,307,732 from MGA with respect to its investments in the GICs, and that these funds were immediately invested in the PSR Fund's money market fund.

Pentair represents that in addition to the funds realized from the Rehab Plan and MGA, as of June 13, 1997 the PSR Fund had also earned a total of $59,080 in interest on the Rehab Plan and MGA payments which had been deposited in the PSR Fund's money market account.

5. In order to assure that all affected participants, regardless of their state of residency, receive a timely and equivalent recovery of their frozen account balances invested in the GICs, and in order to restore to all affected Plan participants complete access to their entire account balances invested in the PSR Fund, Pentair represents that it proceeded on June 13, 1997 to purchase from the Plan the Interest, which is the PSR Fund's entire remaining interest in the GICs (the Interest) by depositing cash into the PSR Fund. For this past purchase of the Interest from the Plan for cash, Pentair requests as exemption under the terms and conditions described herein.

6. Pentair represents that it purchased the Interest from the Plan by depositing cash into the PSR Fund in the amount of $635,672, which was the amount necessary to enable the Plan to have received, from all sources, a total recovery on the GICs in the amount of $11,726,076 (the Total Recovery Amount). Pentair represents that in receiving the Total Recovery Amount, the Plan recovered the Seizure Date Values of the GICs plus interest thereon at the Contract Rates through the maturity dates of each GIC, plus post-maturity interest on each GIC at the rate of five percent from the maturity dates through March 31, 1997, the date established under the Rehab Plan for contract valuation. Pentair represents that the 5 percent rate of interest was the rate of interest established under the Rehab Plan, and accepted by MGA, for the purposes of crediting earnings to the GICs after their contract maturity dates.

7. Pentair represents that by purchasing the Interest from the PSR Fund, it has assumed all risks with respect to the future payments by the Rehab Plan and MGA with respect to the GICs. Upon receipt of the purchase price for the Interest, the Fund Trustees were able to lift the freeze on the portion of the participant accounts invested in the GICs and they restored to each affected account its pro-rata share in the Total Recovery Amount. Pentair represents that it proceeded with the purchase of the Interest on June 13, 1997 in order that affected Plan participants residing outside Minnesota would not be required both to await future Rehab Plan and to accept a lesser recovery with respect to their frozen account balances. Pentair represents that its purchase of the Interest also enabled all affected participants, regardless of residency, to have immediate access to their account balances for purposes of making investment transfers, obtaining hardship withdrawals or plan loans, and receiving distributions of the portion of their account balances which had been frozen when they became entitled for distributions. Pentair represents that in the event the amount of future distributions from the GICs exceeds the purchase price paid to the Plan for the Interest, such excess amounts shall be transferred to the Plan and allocated pro rata among the accounts of the affected Plan participants.

8. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale was a one-time transaction for cash; (b) the purchase

[22] Book value represents total deposits under the GICs plus interest at the rates guaranteed under the GICs (the Contract Rates) through August 12, 1994, less previous withdrawals.

price paid by Pentair for the Interest enabled the Plan to have recovered the Total Recovery Amount, representing the sum of (i) the book value of the GICs as of the Seizure Date, (ii) Contract Rate interest thereon through the GICs' maturity dates, (iii) post-maturity interest at the rate of 5 percent through March 31, 1997; (c) the transaction enabled the PSR Fund to avoid any risk associated with the continuation of the Rehab Plan and enabled the participants to direct PSR Fund assets to other investments; and (d) the Plan did not incur any expenses or suffer any losses from the transaction.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Robert H. Herzog Profit Sharing Plan, (the Plan) Located in Santa Barbara, California

[Application No. D–10494]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of a certain residential condominium (the Property) by the Plan [23] to Robert H. Herzog (Mr. Herzog), a disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan receives the fair market value of the Property at time of the Sale; and

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Factual Representations

1. The Plan is a profit sharing plan which was established by Mr. Herzog, the sole participant and beneficiary. As of August 1997, the Plan held assets valued at approximately $141,500. The trustee of the Plan is Mr. Herzog.

2. The Property is a residential condominium unit located at 362 Old Mammoth Road, Unit 62, Sherwin Villas in Mammoth Lakes, California. The Property consists of one bedroom, one-and-a-quarter baths and has a total living area of 704 square feet. The specific zoning classification and description of the Property is ''RF–2 Residential Multiple Family.''

3. According to the applicant, the Plan originally acquired the Property as a real estate investment. The Plan purchased the Property in October 1996 from an unrelated third party in a cash transaction for $40,271, including expenses. The applicant represents that the Plan has rented out the Property on a short-term basis to visitors of the Mammoth Lakes resort, and all income and expenses attributable to the Property are applied to the Plan. Since purchasing the Property, the Plan has spent approximately $9,723 on improvements but, because of rental income, has shown a net profit of approximately $945.

Mr. Herzog represents that the Property has not been leased to, or used by, any disqualified persons.

4. The applicant requests an exemption for the proposed sale of the Property by the Plan to Mr. Herzog. According to Mr. Herzog, he desires to sell the Property because it has failed to produce the desired rate of return and because it has become unwieldy investment from a management perspective. As noted above, the Plan would receive cash for the Property in an amount equal to the fair market value of such Property, as determined by a qualified, independent appraiser at the time of the Sale.

The applicant represents that the proposed transaction would be feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the Plan because it would permit the Sale of the Property, enabling the Plan to invest the proceeds from the Sale in assets with a higher rate of return. Finally, the applicant asserts that the transaction will be protective of the rights of the participant and beneficiary as indicated by the fact that the Plan will receive the fair market value of the Property, as determined by a qualified, independent appraiser on the date of sale, and will incur no commissions, costs, or other expenses as a result of the Sale.

5. Cheryl L. Schafer (Ms. Schafer), an accredited appraiser with Mammoth Lakes Appraisal, located in Mammoth Lakes, California, appraised the Property on July 14, 1997. Ms. Schafer states that she is a full time qualified, independent appraiser, as demonstrated by her status as a Certified Residential Real Estate Appraiser licensed by the State of California. In addition, Ms. Schafer represents that both she and her firm are independent of Mr. Herzog. After inspecting the Property, Ms. Schafer determined that a fee simple interest in the Property is worth $50,000.

In her appraisal, Ms. Schafer relied primarily on the direct sales comparison approach. According to Ms. Schafer this method best represents the actions of buyers and sellers in the marketplace. This method of appraisal involves an analysis of similar recently sold properties in the area in question so as to derive the most probable sales price of the Property. Ms. Schafer's appraisal indicates that she compared the Property to six recently sold condominium units in the Mammoth Lakes area before reaching a conclusion as to the value of the Property.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the Sale would be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale would be a one-time cash transaction allowing the Plan to invest in assets with a higher rate of return; (c) the Plan would receive the fair market value of the Property, established by a qualified independent appraiser; and (d) the Plan would not be required to pay any commissions, costs or other expenses in connection with the Sale.

Notice to Interested Persons

Because Mr. Herzog is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

CoreStates GIC and BIC Fund (the Fund), Located in Philadelphia, Pennsylvania

[Application No. D–10522]

Proposed Exemption

The Department of Labor is considering granting an exemption

[23] Because Mr. Herzog is the only participant in the Plan, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the Fund of the Fund's remaining interest in two Guaranteed Investment Contracts (the GICs) of Confederation Life Insurance Company (CL) to CoreStates Bank, N.A. (the Bank), a party in interest with respect to the Fund; provided (1) the Sale was a one-time transaction for cash, (2) the Fund received no less than the fair market value of the GICs at the time of the Sale, (3) the Fund and its participants and beneficiaries did not incur any costs or expenses with respect to the Sale, and (4) any future distributions from the GICs that exceed the consideration paid to the Fund by the Bank in the Sale shall be paid to the Fund and allocated to the respective accounts of the affected employee benefit plans.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 31, 1997.

Summary of Facts and Representations

1. The Bank, which is the applicant, is a wholly-owned subsidiary of CoreStates Financial Corp., a bank holding company organized under federal and Pennsylvania laws and located in Philadelphia. The Bank is the successor to Hamilton Bank, which the Bank acquired in 1980. The Bank offers traditional commercial banking services to individuals and privately and publicly created entities located in the Middle Atlantic states.

Until 1993, Hamilton Bank served as trustee or investment custodian for approximately 250 employee benefit plans, and had investment discretion for either some or all of the assets of such plans (the Plans). Commencing in 1993, the Bank undertook such activities and duties for the Plans. The Plans include both defined benefit and defined contribution plans, such as profit sharing, money purchase pension, 401(k), and Keogh plans.

2. The Fund is a pooled fund sponsored and administered by the Bank in which the Plans invest portions of their assets. The investments made by the Fund are limited to guaranteed investment contracts issued by insurance companies and to bank investment contracts issued by banks. The applicant states that CoreStates Investment Advisers, Inc. (Advisers), a wholly-owned subsidiary of the Bank, is the investment adviser for the Fund and has investment discretion over the assets of the Fund. The applicant represents that with respect to each Plan that has invested in the Fund, the determination to invest Plan assets in the Fund is made by a fiduciary of the Plan independent of the Bank or by the participants of a Plan which provides for self-directed investment of individual participant accounts. As of September 30, 1997, the applicant represents that the fair market value of the assets of the Fund was approximately $5,638,341.

3. The Fund has invested a portion of its assets in the two GICs issued by CL, a Canadian insurance corporation doing business in the United States through branches in the states of Georgia and Michigan. The two GICs involved in the transaction for which the exemption is requested are described as follows:

	GIC No. 61977	GIC No. 62403
Date Purchased	Dec. 4, 1989	March 1, 1991.
Original Maturity Date	Dec. 3, 1994	April 30, 1996.
Amount Deposited	$500,000.00	$1,000,000.00.
Contract Rate of Interest	8.50 percent	8.20 percent.
8/12/94 Book Value [24]	$528,615.00	$1,036,045.00

[24] Book Value is the sum of the total principal deposits plus interest thereon at the rates guaranteed under the terms of the GICs, less previous withdrawals.

4. On August 11, 1994, the Canadian insurance regulatory authorities placed CL into liquidation and a winding-up process. On August 12, 1994, the insurance authorities of the state of Michigan commenced legal action to place the U.S. operations of CL into rehabilitation, which involved liquidating the assets of CL and establishing the methodology for determining and paying its contractual obligations. The applicant represents that a plan of rehabilitation (the Rehab Plan) has been approved by the rehabilitation authorities, and payments to CL contract holders, including the Fund, commenced under the Rehab Plan in April of 1997.

In addition to the amounts paid to the Fund by CL under the Rehab Plan, the GICs have also been afforded protection by the Pennsylvania Life and Health Insurance Guaranty Association (PLHIGA). Under the terms of the enabling statute of PLHIGA, the principal amount of the GICs was fully insured, and a substantial portion the interest due under the terms of the GICs was also insured by PLHIGA.[25]

5. The applicant states that In accordance with the Rehab Plan, substantial payments have been made by CL to the Fund with respect to the GICs. The applicant represents that in combination with the additional payments to the Fund by PLHIGA, the Fund already has recovered 100 percent of is principal investment in the GIC, plus substantial portions of the interest due under the GICs within the limits of PLHIGA's coverage. The applicant represents that CL has predicted that some additional amounts will be paid from various reserve funds over the next few years as the remaining assets of CL are liquidated.

The details of payments to the Fund are as follows:

	GIC No. 61977	GIC No. 62403
Paid 4/25/97 by CL	$458,773.70	$910,105.36
Paid 5/20/97 by CL	9,578.40	5,429.83

[25] The applicant represents that PLHIGA's coverage of interest on a GIC's principal (a) is limited to the four years prior to the rehabilitation date during which the GIC was in effect, (b) does not exceed 2 percentage points below the Moody Corporate Bond Average, and (c) for the period after the rehabilitation date up to the date of payment by PLHIGA, does not exceed 3 percentage points below the Moody Corporate Bond Yield Average.

	GIC No. 61977	GIC No. 62403
Paid 5/27/97 by CL	60,480.93	120,522.70
Paid 5/30/97 by PLHIGA	75,085.11	164,396.53
Paid 9/2/97 by CL	11.96	23.73
Total to date received	603,930.10	1,220,478.15
Projected future payments	3,714.00	8,347.00

6. In order to enable the Fund and its participating Plans to achieve a completed liquidation of the Fund's investment in the GICs and avoid additional accounting expenses related to monitoring and allocating future Rehab Plan payments, the Bank proposes to purchase the Fund's remaining interests in the GICs by acquiring the Fund's right to all future payments from CL pursuant to the Rehab Plan with respect to the GICs. The Bank is requesting an exemption for this purchase transaction under the terms and conditions described herein. As purchase price for all rights to future CL payments with respect to the GICs, the Bank proposes to pay the Fund cash in the amount of $12,061.00, which the applicant represents to be the amount of projected future payments on the GICs as calculated in accordance with the terms of the Rehab Plan. The Bank intends the cash sale transaction to take place December 31, 1997. The applicant represents that the Sale will enable the Plans invested in the Fund and their affected participants and beneficiaries to realize immediately the future Rehab Plan payments with respect to the GICs without awaiting the four years which is estimated for complete payment under the Rehab Plan. The applicant represents that the Fund and the Plans will not incur any costs or expenses with respect to the sale transaction. In the event the Bank should receive future payments on behalf of the GICs in excess of the purchase price of $12,061.00, such excess amounts shall be transferred to the Fund.

The applicant represents that the valuation methodologies used to determine the projected future payments on the GICs have been reviewed and accepted by the Michigan Insurance Commissioner, the Circuit Court of Ingham County, Michigan, the National Organization of Life and Health Guaranty Associations, and ACLIC, an organization of large financial institutions and plan sponsors that invested in CL GICs.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale will be a one-time transaction for cash; (b) the transaction will enable the Fund to avoid the additional administrative costs that will be experienced from retention of the Fund's remaining interests in the GICs; (c) no costs or expenses will be incurred by the Fund with respect to the Sale; (d) the plans participating in the Fund, and their participants and beneficiaries, will receive promptly all anticipated amounts owed by CL rather than over an anticipated next four years; and (e) any future distributions from the GICs that exceed the consideration paid to the Fund by the Bank in the Sale shall be paid to the Fund and allocated to the accounts of the Plans invested in the Fund at the time of the Sale.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Hawaii Laborers' Apprenticeship and Training Trust Fund (the Trust Fund)

[Application No. L–10485]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the purchase of a certain parcel of unimproved real property (the Property) by the Trust Fund from the Laborers International Union of North America, Local 368, AFL–CIO (a/k/a the Hawaii Laborers Union), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The purchase of the Property by the Trust Fund is a one-time transaction for cash;

(b) The Trust Fund pays no more than the lesser of: (i) $1,570,000; or (ii) the fair market value of the Property as determined at the time of the transaction;

(c) The fair market value of the Property is established by an independent, qualified real estate appraiser that is unrelated to the Hawaii Laborers Union or any other party in interest with respect to the Trust Fund;

(d) The Trust Fund does not pay any commissions or other expenses with respect to the transaction;

(e) The Hawaiian Trust Company, Ltd. (Hawaiian Trust), acting as an independent, qualified fiduciary for the Trust Fund, determines that the proposed transaction is in the best interest of the Trust Fund and its participants and beneficiaries;

(f) Hawaiian Trust monitors various aspects of the purchase of the Property until closing, including the environmental reports concerning the Property, and takes whatever action is necessary to protect the interests of the Trust Fund; and

(g) The purchase price paid by the Trust Fund for the Property represents no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

Summary of Facts and Representations

1. The Trust Fund is an apprenticeship training plan the assets of which are subject to the fiduciary responsibility provisions of Part 4 of Title I of the Act. The Trust Fund is also established and administered pursuant to the provisions of section 302 of the Labor Management Relations Act of 1947. Currently, there are approximately 2800 participants and beneficiaries covered by the Trust Fund. As of May 1997, the Trust Fund had total assets of $6,221,075.

2. The Property is a parcel of unimproved real property located at 96–150 Farrington Highway in Waiawa on the island of Oahu in the State of Hawaii. The Property is currently owned by the Hawaii Laborers' Union (the Union).

The Property is an irregularly shaped parcel with a gross land area of 3,981 acres or approximately 173,412 square feet. Approximately, 40,000 square feet of the Property is adjacent to the Waiawa Stream and is considered unusable for development. Thus, the usable portion of the Property represents approximately 133,412 square feet. The Property is

undeveloped and partially overgrown with trees and shrubs along its perimeter. The interior portions of the Property are terraced, due to varying topography, with open yard areas.

The Property was recently re-zoned as an I–2 Intensive Industrial District. In this regard, the I–2 zoning designation is intended to set aside areas of Waiawa for a full range of industrial uses necessary to support the city. The applicant states that the current zoning designation will allow for the planned construction of a building to be used as a training school for participants in the Hawaii Laborers' Union apprenticeship and training plan (see Paragraph 3 below). The Property is located at the fringe of the Pearl City commercial area and is in close proximity to major freeways in Waiawa. Real estate appraisals of the Property state that an industrial complex which maximizes allowed density would represent the highest and best use of the site.

3. The applicant states that the Trust Fund's trustees (the Fund Trustees) would like to have the Trust Fund purchase the Property from the Union, a party in interest with respect to the Trust Fund. The proposed transaction would allow the Trust Fund to construct a building on the Property for use as a training facility for the Trust Fund's participants. At the present time, training classes are being held in temporary quarters—10 by 40 foot trailers—which limit the amount of students per class. The Fund Trustees believe that the Property is an ideal location for a training facility.

Current plans call for the construction of a three-story building (the Building), which will house six classrooms, a multi-purpose room, a kitchen, restrooms, and storage areas. In addition, a dormitory for neighboring island students and caretaker's quarters will be located on the second floor of the Building. The third floor of the Building will accommodate the administrative offices. The Building would be designed to meet the applicable zoning specifications.

The Building will provide a permanent facility for classrooms and ''hands-on'' training for laborer employment in various construction trades as well as housing accommodations for trainees from the neighboring islands. The Trust Fund currently lodges the trainees in hotels, which is fairly expensive for the Trust Fund.[26]

The applicant states that if the Trust Fund is unable to purchase the Property, it will have to consider other locations which are more expensive and possibly not as conducive to the activities for the proposed training facility. According to information supplied by independent real estate appraisers,[27] the cost of purchasing a similarly sized property suitable to the Trust Fund would be almost twice the cost of the proposed transaction. Thus, the applicant represents that if the Trust Fund is unable to proceed with the proposed transaction, and if no other affordable properties are available, the Trust Fund's existence may be in jeopardy.

4. The Property was appraised by James E. Hallstrom, Jr., MAI, SRA, of The Hallstrom Group, Inc. (Hallstrom), a real estate consultant and appraisal firm located in Honolulu, Hawaii. Hallstrom determined that the fair market value of the net usable area (*i.e.*, approximately 133,412 square feet) of the Property was approximately $1,570,000, as of January 31, 1997. Thus, based on Hallstrom's appraisal, the unusable portion of the Property does not add any value to the Property. The applicant states that in the proposed transaction the Trust Fund would not pay any additional amount to acquire this portion of the Property.

Hallstrom utilized a sales comparison methodology in valuing the Property. Hallstrom compared the Property with recent sales of four other industrial zoned properties, all within immediate and/or competitive market areas of the Property. In order to equate these four transactions with the Property, Hallstrom made adjustments for various comparative factors including appreciation/depreciation over time, location, zoning, frontage/access, off-site improvements, current easements and restrictions,[28] physical characteristics, and size. After making the necessary adjustments, Hallstrom concluded that the unencumbered fee simple interest in the Property would have a fair market value of approximately $11.75 per usable square foot, which would be rounded to a total of approximately $1,570,000. Hallstrom also concluded that an industrial complex, such as the Trust Fund's proposed training facility, would represent the highest and best use of the Property.

5. The Union has agreed to sell the Property to the Trust Fund for $1,570,000 in cash, subject to the review and approval of an independent fiduciary (see Paragraph 6 below). The parties will obtain an updated appraisal of the Property from Hallstrom at the time of the proposed transaction to ensure that the appraised amount (*i.e.*, $1,570,000) still reflects the fair market value of the Property at that time. The parties have agreed that the Trust Fund will pay the lesser of either: (i) $1,570,000, or (ii) the fair market value of the Property at the time of the transaction. In addition, the applicant states that the Trust Fund will not pay any commissions, transaction costs, or other expenses associated with the sale of the Property by the Union, other than the fees necessary for services of the Trust Fund's independent fiduciary, Hawaiian Trust. Thus, the Union will pay, among other things, the costs of the title search and title insurance premiums, the cost of recording the deeds conveying title to the Property to the Plan, all sales and transfer taxes (including the conveyance tax), the escrow fees, and the cost of Hallstrom's appraisal.

6. Hawaiian Trust has been appointed by the Fund Trustees to act as an independent fiduciary for the Trust Fund for purposes of the proposed transaction. Hawaiian Trust represents that it is a trust company organized under the laws of Hawaii and that it exercises fiduciary powers similar to those of national banks. Hawaiian Trust states that it is an experienced fiduciary in matters concerning employee benefit plans subject to the Act and is also experienced with real estate transactions and investments. Hawaiian Trust acknowledges its duties, responsibilities and liabilities in acting

[26] The Department is providing no opinion in this proposed exemption as to whether the current expenditures made by the Trust Fund for providing training, or whether future expenditures to be made by the Trust Fund for the construction of the Building and for the maintenance of the Building as a training facility, are or will be consistent with the fiduciary responsibilities contained in Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan and its participants and beneficiaries when providing benefits to such participants and beneficiaries and defraying reasonable expenses of administering the plan.

[27] Other sites, as stated by The Hallstrom Group, Inc. (the Trust Fund's real estate appraiser for the Property as discussed in Paragraph 4 above) were valued at $40 per square foot, $37.85 per square foot, $24.73 per square foot, and $31 per square foot, whereas the Property was determined to be $11.75 per usable square foot. In addition, Art Balmaceda of Prudent Investors' Choice Realty Inc., an independent realtor in Honolulu, Hawaii, investigated two other properties for the Trust Fund. One property was 97,936 square feet (approximately 73 percent of the size of the Property) and valued at $2.5 million or $25.53 per square foot. The other property, which was approximately 7.52 acres and valued at $8.9 million, was too expensive for the Trust Fund.

[28] Hallstrom's appraisal notes that there is a 12-foot wide easement, in favor of the Hawaiian Electric Company, for power poles and overhead electrical wires. However, the Hawaiian Electric Company is currently negotiating with the Trust Fund to cancel the existing easement and relocate it so as not to interfere with the proposed Building.

as a fiduciary for the Trust Fund for purposes of the proposed transaction.

Hawaiian Trust represents that it is an independent fiduciary and not an affiliate of, or related to, the entities involved in the subject transaction. In this regard, Hawaiian Trust certifies that: (i) less than one (1) percent of its total deposits, or outstanding loans, are attributable to the deposits of, or loans to, the Union and its affiliates; and (ii) less than one (1) percent of its annual income (measured on the basis of the prior year's income) comes from business derived from the Union and its affiliates.

7. Hawaiian Trust has reviewed all of the terms and conditions of the proposed purchase of the Property by the Trust Fund. Hawaiian Trust's review and analysis included an on-site inspection of the Property as well as meetings with the appraiser, Hallstrom, and a thorough review of their most recent appraisal of the Property. Hawaiian Trust states that Hallstrom's appraisal has considered all of the factors necessary to accurately determine the fair market value of the Property, including its location vis-a-vis Waiawa Stream, the Hawaiian Electric Company's easement, the applicable zoning restrictions for industrial usage, the Property's accessibility to the Farrington Highway, and the offsite improvements surrounding the Property.

Based of this review and analysis, Hawaiian Trust concludes that the proposed transaction would be in the best interests of the Trust Fund and its participants and beneficiaries. In this regard, Hawaiian Trust states that the purchase of the Property would be a prudent transaction taking into consideration that the Trust Fund will be using this site as a training facility. Hawaiian Trust states that the agreed upon purchase price of $1,570,000, based on the Hallstrom appraisal, accurately reflects the current market value of the Property.

Hawaiian Trust states further that it will monitor the proposed purchase of the Property by the Trust Fund and will take whatever actions are necessary to protect the interests of the Trust Fund's participants and beneficiaries with regard to the transaction. To this end, Hawaiian Trust represents that it will ensure that the current appraisal of the Property is updated at the time of the transaction and that the Trust Fund pays no more than the fair market value of the Property. Hawaiian Trust will also ensure that the purchase price paid by the Trust Fund represents no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

Hawaiian Trust represents that the Trust Fund will be able to meet all of its current expenses after the proposed transaction and that the transaction will not adversely affect the Trust Fund's liquidity needs. By letter dated August 22, 1997, Hawaiian Trust states that it has reviewed the Trust Fund's most recent financial information, including audited financial reports for the past six years, budget and financial statements for the last three full years, and the revised budget for the current plan year through July 31, 1997. In addition, Hawaiian Trust states that it spoke with the Trust Fund's Investment Manager, Brian H. Morikuni of T.M. Hogan, Inc., regarding the latest asset valuations and investment earnings. These valuations show that the proposed purchase price of $1.57 million should be less than 25 percent of the Trust Fund's total assets as of December 1997 (the projected time of closing).

Hawaiian Trust is responsible for ensuring that inspections of the Property are conducted by appropriate professionals prior to the transaction. These inspections will ensure that there are no hidden or unapparent surface or subsurface conditions on the Property—including soils, subsoils, geologic formulations, ground water or drainage conditions—that would adversely affect improvements and the value of the Property. Hawaiian Trust will review the latest soil analysis [29] and environmental assessment [30] (Phase I) reports for the Property, prior to the proposed transaction. In the event that there are significant environmental concerns regarding the Property (e.g. groundwater contamination exceeding State or Federal standards), Hawaiian Trust will not approve the proposed purchase of the Property by the Trust Fund. Hawaiian Trust will also verify the cancellation of the Hawaiian Electric Company's easement (see Footnote 2 herein) prior to the transaction. Finally, Hawaiian Trust represents that it will continue to review and monitor the proposed transaction until closing to ensure that the transaction is in the best interests of the participants and beneficiaries of the Trust Fund.

8. In summary, the applicant states that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The purchase of the Property by the Trust Fund will be a one-time transaction for cash; (b) the Trust Fund will pay no more than the lesser of either $1,570,000, or the fair market value of the Property as determined at the time of the transaction; (c) the fair market value of the Property will be established by an independent, qualified real estate appraiser; (d) the Trust Fund will not pay any commissions or other expenses with respect to the transaction, other than the services of an independent fiduciary (as described herein); (e) Hawaiian Trust, acting as the Trust Fund's independent fiduciary, has determined that the proposed transaction would be in the best interest of the Trust Fund and its participants and beneficiaries; (f) Hawaiian Trust will monitor the proposed transaction and will take whatever actions are necessary to protect the interests of the Trust Fund; and (g) the purchase price paid by the Trust Fund for the Property will represent no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section

[29] C.W. Associates, Inc. d/b/a GeoLabs-Hawaii (GeoLabs), a geotechnical engineering firm in Honolulu, Hawaii, was hired to conduct a soil analysis of the Property. An October 14, 1997 letter from GeoLabs states that the Property will support the proposed Building utilizing spread footing foundations.

[30] M&E Pacific, Inc. (M&E), an independent, qualified environmental assessment firm located in Honolulu, Hawaii, has conducted a Phase I report, as of October 1997. The purpose of the Phase I report was to inventory the presence of potential on-site hazardous waste or hazardous substance contamination (e.g. hydrocarbons), and to detect potential noncompliance in relation to current and past activities conducted on or adjacent to the Property. According to the findings of M&E, there is no physical evidence of environmental concerns regarding the Property. However, two previous petroleum pipeline spills have been documented in the vicinity of the Property. Thus, M&E recommends further groundwater sampling on the southern boundary of the Property to determine the extent of any contamination.

In this regard, Hawaiian Trust will ensure that appropriate groundwater sampling tests are conducted prior to the transaction.

401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of November, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–30826 Filed 11–21–97; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: December 8, 1997, from 10 a.m. to 11:30 a.m.

ADDRESSES: United States Capitol Building, Room H130.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Update—Electronic Records Task Force

Report—Abraham Lincoln Commemoration

Report—Project 2000 Proposals

Update—Center for Legislative Archives

Other current issues and new business

The meeting is open to the public.

Dated: November 18, 1997.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 97–30797 Filed 11–21–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee will be held on Thursday, December 11, 1997, from 9:30 a.m. to 11:30 a.m. The Business Session will be held at the Department of State, 2101 C Street NW., Washington, DC. The Executive Session will be held at the Old Executive Office Building, 16th and Pennsylvania Avenue NW., Washington, DC. The agenda is as follows:

—Call to Order/Welcoming Remarks

—Eligible Receiver

—NCS Manager's Report

—IES Report of Activities

—PCCIP Report

—Industry Executive Subcommittee (IES) Reports

  —Summary of Work Plan Accomplishments

  —IATF/IIG Infrastructure Assessments

  —Recommendations to the NSTAC Principals

—Adjournment

The meeting is classified at the SECRET level. Due to the sensitive nature of the issues listed above, the meeting will be closed to the public in the interest of national defense.

FOR FURTHER INFORMATION: Please contact Ms. Janet Jefferson (703) 607–6209 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards.

[FR Doc. 97–30804 Filed 11–21–97; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL CREDIT UNION ADMINISTRATION

Information Collection; Comment Request for Reinstatement

DATES: November 24, 1997.

The National Credit Union Administration (NCUA) intends to submit the following public information collection request to the Office of Management and Budget (OMB) for review and reinstatement under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. Public comments are encouraged and will be accepted until January 23, 1998.

Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Betty May, (703–518–6414). Comments and/or suggestions regarding the information collection request should be directed to Mrs. May at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–518–6433; e-mail address: bettym@ncua.gov within 60 days from the date of this publication in the **Federal Register**.

OMB Number: 3133–0015.

Form Number: 4000, 4001, 4008, 4012, 4015, 4016, 4401, 9500, 9600.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Federal Credit Union Charter Application and Field of Membership Amendments.

Description: The Federal Credit Union Act sets forth the requirements for establishing a credit union based on a type of field of membership. The data collection is necessary to determine that the application for the charter/amendment is in compliance with the FCU Act. Respondents are credit union officials or applicants for credit union charters.

Respondents:

Estimated No. of Respondents/Recordkeepers: 5725.

Estimated Burden Hours Per Response: 3.6.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 20,303.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 14, 1997.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–30765 Filed 11–21–97; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

Time and Date: 2:13 p.m., Monday, November 17, 1997.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

Status: Closed.

Matter Considered: 1. Matters Relating to OPM Report. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice, that it be closed to the public, and that earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–30873 Filed 11–19–97; 4:26 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic and Severe-Accident Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic and Severe-Accident Phenomena will hold a meeting on December 9 and 10, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting will be closed to public attendance to discuss Westinghouse Electric Corporation proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, December 9, 1997—8:30 a.m. until the conclusion of business

Wednesday, December 10, 1997—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the results of the Westinghouse Test and Analysis Program being conducted in support of the AP600 design certification. Specifically, the Subcommittee will continue its review of the Westinghouse Phenomena Identification and Ranking Table (PIRT) and Scaling Report pertaining to the AP600 primary system. The Subcommittee will also continue its review of the use of the NOTRUMP code for small-break LOCA analyses. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 18, 1997.

Amarjit Singh,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 97–30779 Filed 11–21–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic and Severe-Accident Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic and Severe-Accident Phenomena will hold a meeting on December 11 and 12, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting will be closed to public attendance to discuss Westinghouse Electric Corporation proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, December 11, 1997—8:30 a.m. until the conclusion of business

Friday, December 12, 1997—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the results of the Westinghouse Test and Analysis Program being conducted in support of the AP600 design certification. Specifically, the Subcommittee will continue its review of the Westinghouse WGOTHIC code for its application to the Passive Containment System safety analysis. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary

views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 18, 1997.

Amarjit Singh,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 97–30780 Filed 11–21–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Management of Radioactive Material Safety Programs at Medical Facilities: Availability of NUREG

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U. S. Nuclear Regulatory Commission is announcing the availability of NUREG–1516: ''Management of Radioactive Material Safety Programs at Medical Facilities,'' dated May 1997.

ADDRESSES: Copies of NUREG–1516 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Susanne Woods, Mail Stop TWFN 8–F5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–7267.

DESCRIPTION AND SUPPLEMENTARY INFORMATION: On February 13, 1995 (60 FR 8259), NRC announced the availability of Draft NUREG–1516: ''Management of Radioactive Material Safety Programs at Medical Facilities,'' dated January 1995, and requested comments on the document. During preparation of the final NUREG report, the staff considered all the comments, to improve the document.

The final version of NUREG–1516 is now available for use by license applicants, licensees, and NRC staff. The report represents the collective work of a number of staff, with input from two representatives from Agreement States. During various stages of development, the authors received additional input from professional organizations and the Agreement States through presentation and peer review.

NUREG–1516 represents guidance on mechanisms and tools for managing radiation safety programs at medical facilities licensed by either NRC or Agreement States. The guidance describes a systematic approach for effectively managing radiation safety programs by defining the roles of an institution's executive management, radiation safety officer (RSO), and radiation safety committee, if required. Various aspects of program management are discussed and guidance is offered in the following areas: selecting an RSO; determining adequate program resources; using contractual services such as consultants and service companies; conducting program audits; and clarifying the roles of both physician authorized users and supervised individuals.

Current NRC reporting and notification requirements are outlined and a general description is given for how NRC licensing, inspection, and enforcement programs are presently conducted. The NUREG does not describe new or proposed regulations, and licensees are not required to adhere to the principles presented in the document. Rather, this should be viewed as a practical guide to present a management approach and describe management tools that regulatory agencies have observed to be effective for managing a radiation safety program at a medical facility, using current regulatory requirements. The radiation safety principles and practices in NUREG–1516 are specifically directed toward the safe use of byproduct radioactive material; however, the universal applicability of these principles and practices may be helpful to individuals, managing the safe uses of radiation in medicine, who are not mentioned in the NUREG.

Small Business and Regulatory Enforcement Fairness Act

In accordance with the Small Business and Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 12th day of November, 1997.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Medical, Academic and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–30778 Filed 11–21–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Notice

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on October 1, 1997 (62 FR 51494). Individual authorities established or revoked under Schedules A and B and established under Schedule C between September 1, 1997, and September 30, 1997, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established during September 1997.

The following Schedule A authority was revoked during September 1997:

Commission on Civil Rights

Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Public Law 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Schedule B

No Schedule B authorities were established or revoked during September 1997.

Schedule C

The following Schedule C authorities were established during September 1997:

Commission on Civil Rights

Deputy General Counsel to the General Counsel, Office of the General Counsel. Effective September 11, 1997.

Department of Agriculture

Confidential Assistant to the Administrator, Farm Service Agency. Effective September 5, 1997.

Confidential Assistant to the Under Secretary for Research, ducation and Economics. Effective September 9, 1997.

Confidential Assistant to the Administrator, Farm Service Agency. Effective September 17, 1997.

Special Assistant to the Administrator, Food and Consumer Service. Effective September 17, 1997.

Confidential Assistant to the Administrator, Farm Service Agency. Effective September 17, 1997.

Staff Assistant to the Deputy Chief of Staff, Office of the Secretary. Effective September 19, 1997.

Confidential Assistant to the Under Secretary for Research, Education and Economics. Effective September 25, 1997.

Confidential Assistant to the Deputy Administrator for Special Nutrition Programs, Food and Consumer Service. Effective September 26, 1997.

Staff Assistant to the Chief of Staff, Office of the Secretary. Effective September 26, 1997.

Special Assistant to the Administrator, Farm Service Agency. Effective September 30, 1997.

Department of Commerce

Director, Secretariat for Electronic Commerce to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective September 17, 1997.

Department of Defense

Staff Assistant to the Secretary of Defense. Effective September 11, 1997.

Protocol Specialist to the Secretary of Defense. Effective September 11, 1997.

Program Analyst to the Deputy Under Secretary (Environmental Security). Effective September 24, 1997.

Department of Education

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective September 10, 1997.

Director, Intergovernmental and Interagency Affairs Coordination to the Deputy Assistant Secretary, Intergovernmental and Constituent Relations. Effective September 10, 1997.

Deputy Director for Policy and Programs to the Director, Office of Bilingual Education and Minority Language Affairs. Effective September 12, 1997.

Deputy Director for Administration and Management to the Director, Office of Bilingual Education and Minority Language Affairs. Effective September 12, 1997.

Special Assistant to the Assistant Secretary, OPE. Effective September 29, 1997.

Department of Energy

Staff Assistant to the Director, Office of Civilian Radioactive Waste Management. Effective September 11, 1997.

Staff Assistant to the Director, Office of Scheduling and Advance. Effective September 12, 1997.

Special Assistant for Energy Security and International Issues to the Assistant Secretary for Fossil Energy. Effective September 25, 1997.

Special Assistant to the Director, Office of Worker and Community Transition. Effective September 25, 1997.

Staff Assistant to the Special Assistant and Acting Assistant Secretary of Policy and International Affairs. Effective September 25, 1997.

Department of Health and Human Services

Director of Scheduling to the Chief of Staff, Office of the Secretary. Effective September 24, 1997.

Special Assistant to the Director of Intergovernmental Affairs to the Director, Office of Intergovernmental Affairs. Effective September 26, 1997.

Special Assistant to the Assistant Secretary for Children and Families. Effective September 30, 1997.

Department of the Interior

Special Assistant to the Director, Office of Surface Mining, Office of the Director. Effective September 5, 1997.

Special Assistant to the Director, Bureau of Land Mines. Effective September 12, 1997.

Special Assistant to the Chief of Staff. Effective September 17, 1997.

Department of Justice

Senior Advisor to the Director, Community Oriented Policing Services. Effective September 26, 1997.

Department of State

Special Assistant to the Deputy Director. Effective September 3, 1997.

Special Assistant to the Assistant Secretary, Bureau of Economic and Business Affairs. Effective September 12, 1997.

Protocol Specialist to the Chief of Protocol. Effective September 23, 1997.

Federal Energy Regulatory Commission

Special Assistant to the Director, Office of External Affairs. Effective September 4, 1997.

Federal Housing Finance Board

Special Assistant to the Chairman. Effective September 5, 1997.

Federal Mediation and Conciliation Service

Chief of Staff to the Director, Federal Mediation and Conciliation Service. Effective September 18, 1997.

Federal Mine Safety and Health Review Commission

Attorney Advisor to the Commissioner. Effective September 26, 1997.

National Aeronautics and Space Administration

Public Affairs Specialist to the Associate Administrator for Public Affairs. Effective September 9, 1997.

Legislative Affairs Specialist to the Associate Administrator for Legislative Affairs. Effective September 23, 1997.

Office of Science and Technology Policy

Confidential Assistant to the Associate Director for Science. Effective September 5, 1997.

Small Business Administration

Senior Advisor to the Associate Administrator for Communications and Public Liaison. Effective September 19, 1997.

Senior Advisor to the Associate Deputy Administrator. Effective September 19, 1997.

U.S. Arms Control and Disarmament Agency

Special Assistant and Speechwriter to the Director, United States Arms Control

and Disarmament Agency. Effective September 10, 1997.

United States Information Agency

Director, Office of Congressional and External Affairs to the Director, International Broadcasting Bureau. Effective September 25, 1997.

United States Tax Court

Trial Clerk to a Judge. Effective September 11, 1997.

Trial Clerk to a Judge. Effective September 11, 1997.

Trial Clerk to a Judge. Effective September 11, 1997.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–30718 Filed 11–21–97; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Summission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 29, File No. 270–169, OMB Control No. 3235–0149

Rule 83, File No. 270–82, OMB Control No. 3235–0181

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 29 [17 CFR 250.29] states that ''[a] copy of each annual report submitted by an registered holding company or any subsidiary thereof to a State Commission covering operations not reported to the Federal Energy Regulatory Commission shall be filed with the Securities and Exchange Commission no later than ten days after such submission.'' The Commission receives about 62 annual reports per year under this regulation, which imposes an annual burden of about 15.5 hours.

Rule 83 [17 CFR 250.83] authorizes an exemption from the ''at cost'' requirements of Section 13(b) for ''the performance of any service, sales, or construction contract for any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public utility company operating within the United States * * *.'' The Commission receives about one application per year under Rule 83, which imposes an annual burden of about three hours.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

It should be noted that ''an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.''

Written comments regarding the above information shall be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 13, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30722 Filed 11–21–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39331; File No. SR–CBOE–97–56]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Elimination of the Prohibition on the Use of Headsets and Other Telephone Technology

November 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On November 3, 1997, the CBOE filed Amendment No. 1 to its proposal.[3] On November 13, 1997, the CBOE submitted a letter clarifying its ability to surveil the use of telephone headsets on its trading floors.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to eliminate certain restrictions on the types of telephones that may be used at the trading posts for equity options and options on the Standard & Poor's 100 Index (''OEX''). The text of the proposed rule change and Amendment No. 1 is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the prohibitions on certain types of telephones that may

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE added a sentence to clarify that the immediate impact of the rule change will be to allow members in the Standard & Poor's 100 Index pit and in equity pits to use headsets that are being provided with the Exchange's new Ericsson wireless telephone system. See Letter from Timothy Thompson, Senior Attorney, CBOE, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated October 31, 1997.

[4] See Letter from Timothy Thompson, Senior Attorney, CBOE, to Jerome Roche, Law Clerk, Division of Market Regulation, SEC, dated November 13, 1997.

be used by members at the equity option posts and at the OEX trading post. The Exchange's phone policy for the OEX option trading post is reflected in Regulatory Circular RG 96–73, and the Exchange's phone policy for the equity option trading post is contained in Regulatory Circulars RG 94–26 and RG 97–03.

The Exchange is proposing to eliminate the current prohibition on the use of headsets and cellular telephones at both the equity and the OEX option trading posts. The Exchange no longer sees a regulatory reason for continuing to impose these specific prohibitions. The Exchange believes that its customary floor surveillance procedures and the monitoring of trading activities of a member, after a call, by other self-interested members of the trading post are sufficient. In place of prohibiting the use of these types of telephones, the Exchange will issue a circular to its members stating that ''the Exchange may disapprove the use of any type of telephone technology that interferes with the normal operation of the Exchange's own systems or facilities or that the Exchange determines interferes with its regulatory duties.'' The Exchange believes this constitutes a clarification of the authority the Exchange already exercises under Exchange Rule 6.23 which permits the Exchange to ''direct the discontinuance of any communication facility terminating on the floor of the Exchange.'' Pursuant to Rule 6.23, the Exchange will continue to prohibit the use of cellular telephones. In addition to distributing the circular, the Exchange will redistribute a revised version of the OEX and equity option post telephone circulars with the change in the policy indicated. As under the current policies, the CBOE's members wishing to establish a telephone line on the floor must first receive approval of the Exchange or the appropriate Floor Procedure Committee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[5] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Exchange believes that the elimination of the prohibition on headsets and other telephone technology is consistent with these objectives in that it is designed to improve communication to and from the Exchange's trading floor in a manner that prevents fraudulent and manipulative acts and practices and maintains fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should filed six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–56 and should be submitted by December 15, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes the Exchange's proposal to eliminate the per se prohibition on headsets and other telephone technology is consistent with Section 6(b)(5) of the Act.[7] Approval of this rule change permits the CBOE to extend the use of established headset communications equipment to the OEX and equity trading areas.[8] The Commission believes that the Exchange continues to have sufficient authority to regulate and restrict the use of communication devices on its floor under Exchange Rule 6.23 and the phone line approval process in the Exchange's Regulatory Circulars. The Commission also believes that the CBOE has adequately represented its ability to surveil the use of headset communications equipment.

The Commission nonetheless encourages the Exchange to consider the adoption of more comprehensive guidelines in the area of communications equipment approval. The current CBOE telephone policies rely upon the ability to: (1) Approve new telephone lines; and (2) restrict the use of communication devices on its floor, pursuant to Exchange Rule 6.23. This creates a potential loophole whereby a novel communications device could be brought on to the floor, without Exchange approval, if the device did not rely on a ''telephone line'' and had not been clearly restricted pursuant to Exchange Rule 6.23.

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This immediate impact of the proposal is to allow the CBOE's members to utilize headsets that are provided within the Exchange's new Ericsson wireless telephone system. As noted above, this system is currently in use in other trading crowds on the Exchange. Accelerated approval will allow the incorporation of this new technology on the OEX and equity trading posts without further delay. For the foregoing reasons, the Commission believes that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–97–

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this rule, the Commission notes that it has considered the proposed rule's impact on effciency, competition, and capital formation. 15 U.S.C. 78c(b)(5).

[7] U.S.C. 78f(b)(5).

[8] Headsets are currently being used at the trading posts for options on the Standard & Poor's 500 Index (''SPX'') and the Dow Jones Industrial 30 Index (''DJX'') without any reported problems. Telephone conversation between Timothy Thompson, Senior Attorney, CBOE, and Mike Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, on October 30, 1997.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78s(b)(2).

56), including Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30721 Filed 11–21–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39332; File No. SR–PHLX–97–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Options Trading Rotations

November 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 23, 1997, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 of the Act, the PHLX proposes to amend PHLX Rule 1047, ''Trading Rotations, Halts and Suspensions,'' to (1) Emphasize that opening rotations are conducted daily; (2) replace references to ''the Exchange'' with references to ''two Floor Officials and a Market Regulation officer'' throughout PHLX Rule 1047; (3) delete references in PHLX Rule 1047, Commentary .01 (a) and (d) to puts and calls trading on the same security; (4) define modified, reverse and shotgun rotations in PHLX Rule 1047, Commentary .01(b); (5) require reverse rotations where there is a heavy influx of orders, unless exempted by two Floor Officials with the concurrence of a PHLX Market Regulation officer; (6) require that two Floor Officials, with the concurrence of a PHLX Market Regulation officer, approve second and subsequent rotations; (7) provide that, with the approval of two Floor Officials and the concurrence of a PHLX Market Regulation officer, modified rotations (other than a reverse or shotgun rotation) can be employed where there is a delayed opening, halt or suspension in trading or other unusual market conditions; and (8) regarding closing rotations at expiration, add ''or at an earlier time, with the concurrence of a Market Regulation officer,'' to allow the closing rotation at expiration to begin other than after the option normally ceases trading (4:02 p.m.).

The PHLX proposes to make comparable changes to PHLX Rule 1047A, ''Trading Rotations, Halts or Reopenings,'' regarding index options, and to Floor Procedure Advice (''Advice'') G–2, ''Trading Rotations, Halts or Reopenings.'' [1] Because PHLX Rule 1047A(b) refers directly to PHLX Rule 1047, Commentary .01,[2] most of the above-described amendments will apply to index options trading. For PHLX Rule 1047A(a)(ii), (c), (d), and (f), and for the corresponding paragraphs of Advice G–2, the PHLX proposes to replace references to ''the Exchange'' with references to ''two Floor Officials and a Market Regulation officer.'' Under PHLX Rule 1047A(e), closing rotations for expiring index options are not required, nor are they prohibited.[3]

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHLX Rule 1047 governs options trading rotations [4] (including opening rotations), delayed openings, halts or suspensions in trading, reopenings and closing rotations. Trading rotations are intended to produce fair and orderly markets by fairly setting opening prices, taking into account orders and bids/offers on the book and in the trading crowd. The Exchange has considered the types of opening rotations that should be permitted or required in order to reduce the length of option openings, especially in unusual circumstances, and to prevent subsequent rotations. The purpose of the proposed rule change is to improve the efficiency of option openings. PHLX Rule 1047A is the corresponding rule governing index options trading.

First, the Exchange proposes to amend PHLX Rule 1047(a) to emphasize that opening rotations are conducted daily, as opposed to closing rotations, which are conducted only at expiration. This change is designed to clarify PHLX Rule 1047(a).

Second, the Exchange proposes to replace ''the Exchange'' with ''two Floor Officials and a Market Regulation officer'' throughout PHLX Rule 1047. This term originated in a comparable rule of the American Stock Exchange, but lacks specificity and does not reflect that, in reality, the approval of two Floor Officials is received. The Exchange believes that trading rotations present the types of issues and need for prompt determinations that are particularly suited for Floor Official approval.[5] The purpose of adding an Exchange officer is to trigger proper notification of the approval and further encourage prompt openings. It should also enable Exchange staff to better monitor the conditions giving rise to rotation-related Floor Official approval.

Third, the Exchange proposes to delete references in PHLX Rule 1047, Commentary .01(a) and (d) to puts and calls trading on the same security. The purpose of this change is to recognize that almost without exception, both puts and calls trade respecting all Exchange options, such that the preface ''if'' is confusing. The remainder of Commentary .01(a) states that the

[11] 17 CFR 200.30–3(a)(12).

[1] Advice G–2 does not contain a fine schedule. Accordingly, the proposal does not affect the Exchange's minor rule violation enforcement and reporting plan.

[2] PHLX Rule 1047A(b) allows specialists to conduct a rotation in accordance with PHLX Rule 1047, Commentary .01 (b) and (c).

[3] See also CBOE Rule 6.2, Interpretation .03 (closing rotation for expiring index options is not ordinarily employed).

[4] A trading rotation is a series of brief time periods during which bids, offers and transactions in only specified series can be made.

[5] See Securities Exchange Act Release No. 35742 (May 19, 1995), 60 FR 28188 (May 30, 1995) (order approving File No. SR–CBOE–95–04))''CBOE Approval Order'').

Specialist shall determine which type of option should open first, and may alternate the opening of put series and call series or may open all series of one type before opening any series of the other type, depending on current market conditions. The proposal adds the language ''except as provided below'' to emphasize that PHLX Rule 1047.01(b), for example, contains exceptions to these normal rotation procedures.

Fourth, the Exchange proposes to define modified rotations in Commentary .01(b) to include reverse and shotgun rotations. Currently, Commentary .01(b) defines a modified rotation as an opening rotation where each option series opens in the same manner and sequence as during a regular trading rotation,[6] but is permitted to freely trade once all option series with the same expiration month have been opened. The proposal is intended to correct PHLX Rule 1047 to reflect that this description refers to a type of modified rotation, a shotgun rotation. Further, the PHLX proposes to add a definition of a reverse rotation, stating that it involves opening the series with the most distant expiration first, proceeding to the next nearest expiration, and so forth, ending with the nearest expiration, until all series have been opened. Thus, the proposal is designed to update PHLX Rule 1047 to define rotations more thoroughly.

Fifth, the Exchange proposes to amend PHLX Rule 1047, Commentary .01(b)(ii) to require reverse rotations where there is a heavy influx of orders, unless exempted by two Floor Officials with the concurrence of a PHLX Market Regulation officer. Because a reverse rotation opens the most distant expiration first, it is intended to help decrease the number of rotations and result in more prompt openings. Specifically, most order flow and open interest is generally in the nearest months, such that starting with the nearest months and ending with the most distant often results in opening free trading with the most active months (the nearest) being outdated, which, in turn creates the need for subsequent rotations to update those first-rotated months. For purposes of this provision, a heavy influx of orders will be determined on a case-by-case basis, in light of order flow through the PHLX's Automated Options Market (''AUTOM'') system, the number of floor brokers in the trading crowd indicating handheld orders for the opening, and the number of orders placed on the book, relative to normal conditions for that option.

Sixth, the Exchange proposes to amend PHLX Rule 1047, Commentary .01(b)(ii) to require that two Floor Officials, with the concurrence of a PHLX Market Regulation officer, approve second and subsequent rotations to ensure that they occur only when warranted, because of the additional delay in opening free trading. Subsequent rotations are conducted in situations, including the influx of near-month order flow described above, where the rotation was so time-consuming that certain series, such as those earlier in the rotation, become inundated with additional order flow or become priced incorrectly, as the underlying stock price changes. Currently, PHLX Rule 1047 does not refer to or prohibit more than one rotation. The purpose of this change is to expressly permit additional rotations, but to require Floor Official approval to ensure proper and limited use.

Seventh, the PHLX proposes to amend PHLX Rule 1047, Commentary .01(b) to provide that modified rotations (other than a reverse or shotgun) can be employed where there is a delayed opening, halt or suspension in trading or other unusual market conditions, with the approval of two Floor Officials and the concurrence of a PHLX Market Regulation officer. This is intended to facilitate a prompt opening by permitting, although not requiring, a modified rotation in response to certain market conditions. Floor Officials' approval should ensure that expedited rotations are employed where warranted. Specialists could thus conduct rotations other than those defined in PHLX Rule 1047 (shotgun and reverse rotations), which may be appropriate in certain situations.[7]

Lastly, the Exchange proposes to amend the provision regarding equity option closing rotations at expiration. PHLX Rule 1047, Commentary .01(d) provides that when the PHLX's Options Committee decides to conduct a closing rotation on the trading day prior to expiration in an equity option for which the underlying did not trade, the rotation must commence as immediately as practicable following the time at which the option normally ceases free trading (4:02 p.m.). The proposal adds ''or at an earlier time, with the concurrence of a Market Regulation officer,'' similar to other option exchanges,[8] which have conducted such rotations during the trading day. In certain situations, such as where an underlying stock has not traded for a length of time, where there is little likelihood that such stock will reopen that day, it would be more orderly to conduct the closing rotation during the trading day. The time after the close of trading is particularly hectic, due to that confirmation of all trading activity and the preparation of exercise decisions, among other things. The Exchange notes that notification of such an earlier rotation would take place, in accordance with this provision.

According to the PHLX, the Commission previously has acknowledged the importance of prompt and efficient openings, which decrease the amount of time required to obtain market quotes and allow free trading to commence as quickly as possible after the opening.[9] This, in turn, should allow market participants to engage in option strategies promptly after opening and also should facilitate the prompt execution of customer orders. Further, the Commission has acknowledged that permitting Floor Officials to authorize deviations from normal operating procedures may be appropriate, because it facilitates a prompt response to market conditions.[10] The current proposal is intended to promote prompt and efficient openings by updating PHLX rules 1047 and 1047A, and Advice G–2.

For these reasons, the PHLX believes that the proposal is consistent with Section 6 of the Act, in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest, by improving the efficiency of option openings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[6] PHLX Rule 1047, Commenary .01(a) describes a regular trading rotation as opening the series with the nearest expiration, proceeding to the next most distant expiration, and so forth, until all series have been opened.

[7] See also CBOE Rule 6.2, Interpretation .04 (allowing for abbreviated rotations).

[8] See CBOE rule 6.2, Interpretation .03 (requiring a closing rotation for each series of individual stock options on the last business day prior to expiration, commencing at the later of 3:10 p.m. Chicago time or after a closing price of the stock in its primary market is established).

[9] See Securities Exchange Act Release No. 29869 (October 28, 1991), 56 FR 56537 (November 5, 1991) (order approving File No. SR–PHLX–91–04).

[10] See CBOE Approval Order, *supra* note 5.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–97–52 and should be submitted by December 15, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30720 Filed 11–21–97; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Application for Child's Insurance Benefits—0960–0010. The information collected on Form SSA–4-BK is used to entitle children of living and deceased workers to Social Security benefits. The respondents are children of living or deceased workers.

Number of Respondents: 1,740,000.

Frequency of Response: 1.

Average Burden Per Response: 10.5 or 15.5 minutes (depending on the type of claim).

Estimated Average Burden: 372,417 hours.

2. Notice Regarding Substitution of Party Upon Death of Claimant—0960–0288. The information collected on Form HA–539 is used to advise claimants of their statutory right to a hearing and of a decision by the Social Security Administration (SSA) on who, if anyone, should become a substitute party for the deceased, as provided for in the Social Security Act. The respondents are individuals requesting hearings on behalf of deceased claimants on Social Security benefits issues.

Number of Respondents: 35,451.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 2,954 hours.

3. Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—0960–0019. SSA uses the information collected on Form SSA–781 to decide if ''in care'' requirements are met by noncustodial parent(s) (or the spouse of a parent), who is filing for benefits based on having a child in care. The respondents are noncustodial wage earners whose entitlement to benefits depends upon having an entitled child in care.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 2,333 hours.

4. Report of Function—Child—0960–0542. The information collected on Forms SSA–3375, 3376, 3377, 3378, and 3379 will be used by SSA to help determine if a child claiming Supplemental Security Income disability benefits under title XVI is disabled. The respondents are parents or guardians who file for such benefits on behalf of a child.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 166,667 hours.

5. Payee Interview, SSA–835; Beneficiary Interview, SSA–836; Custodian Interview, SSA–837—0960-NEW. SSA is proposing a three-tier review process of the representative payee program. As part of this review process, SSA is proposing to conduct interviews with a sample of beneficiaries and their representative payees. The information will be used to assess the effectiveness of the representative payee program.

	SSA–835	SSA–836	SSA–837
Number of Respondents	2,000	1,000	380
Frequency of Response	1	1	1
Average Burden Per Response (minutes)	30	20	10
Estimated Annual Burden (hours)	1,000	333	63

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Blood Donor Locator Service—0960–0501. Regulation 20 CFR 401.200 requires that requesting State agencies provide to the SSA Blood Donor Locator Service (BDLS) specific information on blood donors who have tested positive for Human Immunodeficiency Virus. The information is used to identify the donor, locate the donor's address in SSA records and assure that States meet regulatory requirements to qualify for using the BDLS. SSA will retain no record of the request or the information after processing has been completed. The respondents are requesting State agencies acting on behalf of authorized blood facilities.

Number of Respondents: 10.

Frequency of Response: 5.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 13 hours.

2. Child Relationship Statement—0960–0116. The information collected on Form SSA–2519 is used to help determine children's entitlement to Social Security benefits under Section 216(h)(3) of the Social Security Act (deemed child provision). The respondents are persons providing information about the relationship between the worker and his/her alleged biological child, in connection with a child's application for benefits.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 12,500 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: November 17, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–30620 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–29–P

DEPARTMENT OF STATE

[Public Notice 2635]

The Bureau of Oceans and International Environmental and Scientific Affairs (OES/S); 60-Day Notice of Proposed Information Collection: U.S.-Egypt Science and Technology Joint Fund Annual Grant Program

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Emergency extension of a currently approved collection.

Originating Office: The Bureau of Oceans and International Environmental and Scientific Affairs (OES/S).

Title of Information collection: U.S.-Egypt Science and Technology Joint Fund Annual Grants Program.

Frequency: Annually.

Form Number: None.

Respondents: Researchers requesting funding for science and technology programs.

Estimated Number of Respondents: 250.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 500 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30723 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF STATE

[Public Notice 2636]

Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection; Application For Consular Report of Birth Abroad of a Citizen of the United States of America

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs (CA).

Title of Information Collection: Application For Consular Report of Birth Abroad of a Citizen of the United States of America.

Frequency: On occasion.

Form Number: FS–579.

Respondents: American parent of persons born abroad.

Estimated Number of Respondents: 40,000.

Average Hours Per Response: 20 minutes.

Total Estimated Burden: 13,334 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including

through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 14, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30724 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2637]

Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection; Report of the Death of an American Citizen Abroad

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Report of the Death of an American Citizen Abroad.

Frequency: On occasion.

Form Number: OF–180.

Respondents: Survivors, relatives, and estates of deceased American citizens who have died abroad.

Estimated Number of Respondents: 5,500.

Average Hours Per Response: 60 minutes.

Total Estimated Burden: 5,500 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30725 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2638]

Bureau of Diplomatic Security; 60-Day Notice of Proposed Information Collection; Request for Building Pass Identification Card (DS–1838)

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Existing collection in use without an OMB control number.

Originating Office: Bureau of Diplomatic Security (DS).

Title of Information Collection: Request for Building Pass Identification Card.

Frequency: On occasion.

Form Number: DS–1838.

Respondents: USG employees, Contractors, Vendors, Press, Caterers, Family Members, Retired employees, and others as needed.

Estimated Number of Respondents: 10,250.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 2,550 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30726 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–43–M

DEPARTMENT OF STATE

[Public Notice 2639]

The Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection: Nonimmigrant Fiance(e) Visa Application (OF–156(K))

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs.

Title of Information Collection: Nonimmigrant Fiance(e) Visa Application.

Frequency: On occasion.

Form Number: OF–156(K).

Respondents: Aliens seeking to obtain nonimmigrant visas.

Estimated Number of Respondents: 12,000.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 24,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for

the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30727 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2640]

Bureau of Population, Refugees and Migration (PRM); 60-Day Notice of Proposed Information Collection; Refugee Biographic Data Sheet OMB #1405–0102

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Population, Refugees and Migration (PRM).

Title of Information Collection: Refugee Biographic Data Sheet.

Frequency: On occasion.

Form Number: OMB #1405–0102.

Respondents: Refugees.

Estimated Number of Respondents: 75,000.

Average Hours Per Response: 30 minutes.

Total Estimated Bureau: 37,500.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30728 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–33–M

DEPARTMENT OF STATE

[Public Notice 2641]

The Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection; Nonimmigrant Treaty Trader/Investor Visa Application (OF–156(E))

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs (CA).

Title of Information Collection: Nonimmigrant Treaty Trader/Investor Visa Application.

Frequency: On occasion.

Form Number: OF–156 (E).

Respondents: Aliens and enterprises that qualify for E–1 and E–2 nonimmigrant visas for the purpose of carrying on their business enterprise in the United States.

Estimated Number of Respondents: 15,000.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 30,000 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30729 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2642]

Office of Overseas School; 60-Day Notice of Proposed Information Collection; Approval of Funding to Support Educational Projects (JF–45)

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Office of Overseas Schools (A/OS).

Title of Information Collection: Approval of Funding to Support Educational Projects.

Frequency: Annually.

Form Number: JF–45.

Respondents: The 190 Overseas American sponsored schools.

Estimated Number of Respondents: 190.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 47.50 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30730 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF STATE

[Public Notice 2643]

The Office of Operations (A/OPR); 60-Day Notice of Proposed Information Collection; Department of State Acquisition Regulation (DOSAR)

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: The Office of Operations (A/OPR).

Title of Information Collection: Department of State Acquisition Regulation (DOSAR).

Frequency: On occasion.

Form Number: OMB #1405–0050.

Respondents: Prospective government contractors.

Estimated Number of Respondents: 2,000.

Average Hours Per Response: 128 hours.

Total Estimated Burden: 225,302.5 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30731 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF STATE

[Public Notice 2644]

The Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection: Application to Determine Returning Resident Status

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs.

Title of Information: Application to Determine Returning Resident Status.

Frequency: On occasion.

Form Number: DSP–117.

Respondents: Returning lawfully alien for permanent residence.

Estimated Number of Respondents: 1,500.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 1,500 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30732 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2645]

The Office of Defense Trade Controls; 60-Day Notice of Proposed Information Collection: DTC Customer Service Survey

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summaries the information collection proposal submitted to OMB:

Type of Request: New Collection.

Originating Office: The Office of Defense Trade Controls (PM/DTC).

Title of Information collection: DTC Customer Service Survey.

Frequency: Annually.

Form Number: None.

Respondents: U.S. Defense Industry Customers.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 150 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30733 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2646]

The Office of the Coordinator for Business Affairs; 60-Day Notice of Proposed Information Collection: Business Survey

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New Collection.

Originating Office: The Office of the Coordinator for Business Affairs.

Title of Information collection: Business Survey.

Frequency: Annually.

Form Number: None.

Respondents: American business community.

Estimated Number of Respondents: 1,500.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 250 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30734 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice 2647]

Bureau of Consular Affairs (CA/VO/F/P); 60-Day Notice of Proposed Information Collection; OF–230 I & II, Application for Immigrant Visa and Alien Registration

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs (CA/VO/F/P).

Title of Information Collection: Application for Immigrant Visa and Alien Registration.

Frequency: On occasion.

Form Number: OF–230.

Respondents: Aliens.

Estimated Number of Respondents: 750,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 750,000.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: October 31, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30735 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2648]

Office of Foreign Missions (OFM); 60-Day Notice of Proposed Information Collection; DSP–99 (Application for Diplomatic Exemption From Taxes on Utilities), and DSP–99A (Application for Diplomatic Exemption From Taxes on Gasoline)

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purposes of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: The Office of Foreign Missions (OFM).

Title of Information Collections: DSP–99 (Application for Diplomatic Exemption from Taxes on Utilities), and

DSP–99A (Application for Diplomatic Exemption from Taxes on Gasoline.

Frequency: On occasion.

Form Number: DSP–99 and DSP–99A.

Respondents: Foreign diplomatic missions and personnel.

Estimated Number of Respondents: 40,000.

Average Hours Per Response: 12 minutes.

Total Estimated Burden: 664 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: October 3, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30736 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–44–M

DEPARTMENT OF STATE

[Public Notice 2649]

Office of Foreign Missions (OFM); 60-Day Notice of Proposed Information Collection; DS–1972, Drivers License and Tax Exemption Card Application

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: The Office of Foreign Missions (OFM).

Title of Information Collection: DS–1972, Drivers License and Tax Exemption Card Application.

Frequency: On occasion.

Form Number: DS–1972.

Respondents: Foreign mission personnel and their dependents in the United States.

Estimated Number of Respondents: 12,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 6,250.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: October 31, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30737 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–44–M

DEPARTMENT OF STATE

[Public Notice 2650]

Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection; Affidavit of Identifying Witness (DS–71)

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Affidavit of Identifying Witness (DS–71).

Frequency: On occasion.

Form Number: DSP–71.

Respondents: Citizens of the United States.

Estimted Number of Respondents: 88,000.

Average Hours Per Response: 5 minutes.

Total Estimated Burden: 7,333.

Public Comments are being solicited to permit the agency to——

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: October 31, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30738 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2651]

The Bureau of Diplomatic Security; 60-Day Notice of Proposed Information Collection: Building Access Application.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Revision of a currently approved collection.

Originating Office: Bureau of Diplomatic Security.

Title of Information collection: Building Access Application.

Frequency: On occasion.

Form Number: DSP–97.

Respondents: Press Corps, maintenance personnel, visitors, and others as needed.

Estimated Number of Respondents: 10,250.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 2,550 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30739 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–43–M

DEPARTMENT OF STATE

[Public Notice No. 2626]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1998 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the countries of Eastern Europe and the independent states of the former Soviet Union. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended).

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1998 under a program administered by the Department of State. The program seeks to build and sustain expertise among Americans willing to make a career commitment to the study of Eastern Europe and the countries of the former Soviet Union.

ORGANIZATION OF NOTICE: This notice contains three parts. Part I lists the closing date covered by this of Notice: notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by February 20, 1998.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520–6510.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If any application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand delivered must be taken to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, 2201 C Street, N.W., Washington, D.C. Please phone first ((202) 736–4572) to ensure access to the building.

The Advisory Committee staff will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. EST daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is ''of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs.'' Congress also declared that the development and maintenance of such knowledge and expertise ''depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government.'' The program provides financial support for advanced research, training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Eastern Europe and the independent states of the former Soviet Union, the program contributes to the overall objectives of the FREEDOM Support and SEED programs.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98–164, 97 Stat. 1047–50, as amended. The countries include Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Kazakstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Slovakia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Bosnia and Herzegovina, Slovenia, Croatia, Serbia (including Kosovo and Montenegro), and the Former Yugoslav Republic of Macedonia.

The Act establishes an Advisory Committee to recommend grant policies

and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from U.S. organizations prepared to conduct competitive programs on the independent states of the former Soviet Union and the countries of Eastern Europe and related fields. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral level, and must have demonstrated a likely career commitment to the study of Eastern Europe and/or the independent states of the former Soviet Union.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Eastern Europe and/or the independent states of the former Soviet Union by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* which offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Eastern Europe and the independent states of the former Soviet Union, and in related studies, including training in the languages of the region, with such training to be conducted on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Eastern Europe and the independent states of the former Soviet Union, and in related studies; and those which facilitate research collaboration between Government and private specialists in these areas;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the countries of Eastern Europe and the independent states of the former Soviet Union by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate the public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the countries of Eastern Europe and the independent states of the former Soviet Union in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies:

—*Support for Transitions.* The Advisory Committee strongly encourages support for activities which, while building expertise among U.S. specialists on the region, *also* promote fundamental goals of U.S. assistance programs such as helping establish market economies and promoting democratic governance and civil societies.

—*Publications.* Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving program funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

—*Library Activities.* Funds may be used for certain library activities which clearly strengthen research and training on the countries of Eastern Europe and the independent states of the former Soviet Union and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.

—*Language Support.* The Advisory Committee encourages attention to the non-Russian languages of the independent states of the former Soviet Union and the less commonly taught languages of the East European countries. Support provided for Russian language instruction/study normally will be only for advanced level. Applicants proposing to offer language instruction are encouraged to apply to a national program as described above which has appropriate peer group review mechanisms.

—*Support for Non-Americans.* The purpose of the program is to build and sustain U.S. expertise on the countries of Eastern Europe and the independent states of the former Soviet Union. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (i.e., U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, i.e., nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must justify the expenditure.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability on the countries of Eastern Europe and the independent states of the former Soviet Union. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which will ensure attention to all the countries of the area. Legislation requires and this announcement indicates under *Program Information* of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost-sharing is encouraged, whenever feasible, in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funds. Funding may be available at a level up to $5.0 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 1997, the Congress appropriated to the program $4.2 million from the U.S. Agency for International Development budget, which funded grants to 10 national organizations. The number of awards varies each year, depending on the level of funding.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's

grant to be made up to three years after the grant's effective date.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one-page executive summary, a budget, and vitae of key professional staff. Proposers may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully. The one-page summary and budget should precede the narrative in the proposal.

Proposed programs should be described fully, including benefits for the fields. All applicants should provide detailed information about their plans for peer evaluation and review procedures and estimates of the types and amount of anticipated awards.

Applicants who have received a grant from this program in the previous competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant received support prior to the last competition, a summary of those awards also should be included.

Descriptions of all competitive award programs should specify both past and anticipated applicant-to-award ratios.

Proposals from national organizations involving language instruction programs should provide for those programs supported in the past year information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre-and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices must be included in the application.

Applications should include certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Pub. L.100–690), in accordance with Appendix C of 22 CFR 137, Subpart F; and (2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Since funds provided by U.S. AID would come separately from its East Europe (including the Baltic states) and New Independent States programs, proposals must indicate how the requested funds will be distributed by region, country (to the extent possible), and activity. Subsequently, grant recipients must report expenditures by region, country, and activity.

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR 145, ''Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' OMB Circular A–110, ''Grants and Agreements with Institutions of Higher Education * * * Uniform Administrative Requirements,'' and OMB Circular A–133, ''Audits of Institutions of Higher Learning and Other Non-Profit Institutions'' and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, ''Cost Principles for Educational Institutions,'' or OMB Circular No. A–122, ''Cost Principles for Nonprofit Organizations;''

(2) A detailed program budget indicating direct expenses by program element, by region (the independent states of the former Soviet Union or Eastern Europe), indirect costs, and the total amount requested. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants requesting funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified.

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address, and point of contact of the audit agency. N.B.: The threshold for grants that trigger an audit requirement has been raised from $25,000 to $300,000.

(5) An indication of the proposer's priorities if funding is being requested for more than one program or activity.

All payments will be made to grant recipients through the Department of State.

Technical Review

The Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in *Part II, Program Information* (45 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes on the countries of Eastern Europe and the independent states of the former Soviet Union (35 points); and

(3) Budget presentation and cost effectiveness (20 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520–6510. Telephone: (202) 736–4572 or 736–4386, fax: (202) 736–4851.

Dated: November 4, 1997.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 97–30761 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2656]

Extension of the Restriction on the Use of United States Passports for Travel To, In, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya.

The Government of Libya still maintain a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular

assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an era ''* * * where there is imminent danger to the public health or physical safety of United States travelers'' within the meaning of 22 U.S.C. 221a and 22 CFR 51–73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at midnight November 24, 1998, unless extended or sooner revoked by Public Notice.

Date: November 20, 1997.

Strobe Talbott,

Acting Secretary.

[FR Doc. 97–30988 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–66–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of November 14, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–3106.
Date Filed: November 10, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR–JK 0018 dated November 7, 1997
Europe-Japan/Korea Expedited Resos r–17
Intended effective date: January 1, 1998

Docket Number: OST–97–3107.
Date Filed: November 10, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC123 0029 dated October 28, 1997
Mid Atlantic Resos r1–6
PTC123 0030 dated October 28, 1997
South Atlantic Resos r7–19
Tables—
PTC123 Fares 0014 dated October 31, 1997
PTC123 Fares 0015 dated October 31, 1997
Intended effective date: March 1, 1998

Docket Number: OST–97–3108.
Date Filed: November 10, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC123 0028 dated October 28, 1997
North Atlantic Resolutions
Minutes—PTC123 0031 dated November 7, 1997
Tables—PTC123 Fares 0013 dated October 31, 1997
Intended effective date: March 1, 1998

Docket Number: OST–97–3116.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC31 N/C 0044 dated October 17, 1997 r1–9
PTC31 N/C 0045 dated October 17, 1997 r10–28
PTC31 N/C 0046 dated October 17, 1997 r29–44
North & Central Pacific Resolutions
Minutes—PTC31 N/C 0048 dated November 11, 1997
Tables—
PTC31 N/C Fares 0021 dated Oct. 21, 1997
PTC31 N.C Fares 0023 dated Oct. 31, 1997
Intended effective date: April 1, 1998

Docket Number: OST–97–3117.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC31 S/CIRC 0033 dated October 14, 1997
Circle Pacific Resos r1–3
Tables—PTC31 S/CIRC Fares 0010 dated October 14, 1997
(Minutes, contained in PTC31 N/C 0048, are filed this date with the Department with the U.S.-related portion of the North and Central Pacific agreement.)
Intended effective date: April 1, 1998

Docket Number: OST–97–3114.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR–SWP 0016 dated October 24, 1997
Europe-Southwest Pacific Resos r1–23
Minutes—PTC23 EUR–SWP 0015 dated Oct. 24, 1997
Tables—
PTC23 EUR–SWP Fares 0006 dated November 11, 1997
Intended effective date: April 1, 1997

Docket Number: OST–97–3119.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Reso 033f—Pakistan Local Currency Rate Changes
Intended effective date: November 16, 1997

Docket Number: OST–97–3120.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC31 N/C 0047 dated October 17, 1997 r1–16
TC3—Central/South America Resolutions
Tables—PTC31 N/C Fares 0022 dated Oct. 28, 1997
(Minutes, contained in PTC31 N/C 0048, are filed this date with the U.S.-related portion of the agreement.)
Intended effective date: April 1, 1998

Docket Number: OST–97–3121.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PSC/Reso/089 dated October 24, 1997
Expedited PSC Resolutions (19th PSC/18th JPSC)
r–1–720a r–2–722 rp–3–1720a rp–4–1728 rp–5–1785a

Intended effective date: as early as January 1, 1998

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–30788 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 14, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for filing Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3113.
Date Filed: November 12, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 10, 1997.

Description: Application of Sky King, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations,

applies for a certificate of public convenience and necessity authorizing foreign charter air transportation of persons and property (passenger and cargo).

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–30789 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–58]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 15, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on November 18, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28971.
Petitioner: AirStar Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 93.316(b).
Description of Relief Sought: To permit the petitioner to add two McDonnell Douglas MD 600N NOTAR helicopters to its 14 CFR part 135 operations specifications and use these aircraft in the Grand Canyon Special Flight Rules Area.

Docket No.: 29041.
Petitioner: Skydive Chicago, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)(1).
Description of Relief Sought: To permit the petitioner to allow individuals who have completed a course of instruction in main parachute packing administered by a Federal Aviation Administration-certificated parachute rigger to pack main parachutes for others to make parachute jumps.

Docket No.: 29025.
Petitioner: Nortwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought: To permit the petitioner to use an appropriately qualified and authorized check airman in lieu of a Federal Aviation Administration inspector to observe a qualifying pilot in command who is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training.

Docket No.: 29003.
Petitioner: Columbia Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.175(a).
Description of Relief Sought: To permit the petitioner to operate its Boeing Vertol/Kawasaki Vertol 107 rotocraft in passenger-carrying operations conducted in daylight under visual flight rules without those rotocraft having approved airborne weather radar equipment installed.

Docket No.: 142CE.
Petitioner: Sino Swearingen Aircraft Company.
Sections of the FAR Affected: 14 CFR 23.3(d).
Description of Relief Sought: To permit the petitioner to type certificate its SJ30–2, a design powered by twin turbofan engines, in the commuter category.

Dispositions of Petitions

Docket No.: 26101.
Petitioner: America West Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.123.
Description of Relief Sought/ Disposition: To permit the petitioner to operate four flights (two arrivals and two departures) at Washington National Airport.

Grant, November 4, 1997, Exemption No. 5133H

Docket No.: 28924.
Petitioner: Stunts Adventure Equipment.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought: To permit the petitioner to allow its employees, representatives, and other volunteer experimental parachute test jumpers under its direction and control to make tandem parachute jumps while wearing a duel-harness, duel-parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with 14 CFR 105.43(a). This exemption also permits PICs of aircraft involved in these operations to allow such persons to make these parachute jumps subject to certain conditions and limitations.

Grant, October 24, 1997, Exemption No. 6693

Docket No.: 29045
Petitioner: Gail Force Express.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate its 14 twin-engine aircraft under part 135 without a TSO–C112 (Mode S) transponder installed.

Grant, November 4, 1997, Exemption No. 6697

Docket No.: 29028.
Petitioner: Mobil Business Resources Corporation.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit the petitioner to operate certain Bell Model 206 and Sikorsky S–76 helicopters without a TSO–C112 (Mode S) transponder installed.

Grant, November 6, 1997, Exemption No. 6696

Docket No.: 22441.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.440(a), 121.441(a)(1) and (b)(1), appendix F to part 121 and Special Federal Aviation Regulation No. 58, paragraph 6(b)(3)(ii)(A).
Description of Relief Sought/ Disposition: To permit the petitioner to combine recurrent flight and ground training and proficiency checks for United Airlines, Inc.'s pilots in command, second in command, and flight engineers in a single annual training and proficiency evaluation program, i.e., a single-visit training program.

Grant, November 6, 1997, Exemption No. 3451K

Docket No.: 26952.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 61.3 (a) and (c).
Description of Relief Sought/ Disposition: Permits the establishment of special procedures that enable an operator to issue to its flight crewmembers, on a temporary basis, confirmation of any required crewmember certificate based on information contained in the operator's approved record system.

Grant, November 6, 1997, Exemption No. 5560B

[FR Doc. 97–30775 Filed 11–21–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on December 18, 1997, at 10 a.m. Arrange for oral presentations by December 8, 1997.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on December 18, 1997, at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC, 10 a.m. the agenda will include:

- A vote on a proposed recommendation on electronic signatures
- Update on the status of the effort to define a strategy for expediting the completion of old ARAC tasks and recommendations
- Update on the status of the Overflights of the National Parks effort
- Update on the Rulemaking Business Process Reengineering effort
- Administrative issues

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by December 8, 1997, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on November 18, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–30771 Filed 11–21–97; 8:45 am]
BILLING CODE 4910–03–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport, Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 24, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Testa, Jr., Airport Director for Manchester Airport at the following address: Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire, 03103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manchester under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge (PFC) at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 29, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the City of Manchester was substantially complete within the requirements of section 158.25 of part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than December 31, 1997.

The following is a brief overview of the use application.

PFC Project #: 97–06–C–00–MHT
Level of the proposed PFC: $3.00
Charge effective date: January 1, 1993
Estimated charge expiration date: October 1, 1998
Estimated total net PFC revenue: $1,626,000
Brief description of project: Upgrade Runway 6–24

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire 03103.

Issued in Burlington, Massachusetts on November 4, 1997.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 97–30777 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33502]

Portland & Western Railroad, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Portland & Western Railroad, Inc. (PNWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire [1] and, to the extent it does not already have such authority, to operate 62.74 miles of rail lines owned by The Burlington Northern and Santa Fe Railway Company in the State of Oregon, described as follows: (1) Between (a) BN milepost 16.87 near Bowers Junction and BN milepost 18.83 near Bendemeer, (b) BN milepost 18.83 to BN milepost 21.26, and (c) BN milepost 21.50 to BN milepost 22.00 at or near Orenco, a distance of approximately 4.89 miles; (2) between BN milepost 17.07 at Bowers Junction and BN milepost 27.84 near Banks, a distance of approximately 10.77 miles; (3) between BN milepost 4.68 near Hillsboro and BN milepost 10.28 near Forest Grove, a distance of approximately 5.60 miles; (4) between BN milepost 25.52 near St. Marys Junction and BN milepost 26.71 near St. Marys, a distance of approximately 1.19 miles; (5) between BN milepost 31.28 near Greton and BN milepost 64.70 near Hopmere, a distance of approximately 33.42 miles; and (6) between BN milepost 10.00 at or near United Junction and BN milepost 16.87 at or near Bowers Junction, a distance of approximately 6.87 miles.[2]

PNWR expected to commence operations on or about November 14, 1997, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33502, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30787 Filed 11–21–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 555X)]

CSX Transportation, Inc.—Abandonment Exemption—in Alachua County, FL

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.41 miles of its line of railroad between milepost AR–716.89 and milepost AR–715.48 at the end of track, in High Springs, Alachua County, FL. The line traverses United States Postal Service Zip Code 32643.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 4, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 15, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

[1] PNWR states that it is buying the rail, track materials, and other personal property necessary for rail service and that it is acquiring an exclusive rail easement over the underlying property.

[2] PNWR states that it currently operates most of the lines under lease authority obtained in *Portland & Western Railroad, Inc.—Lease and Operation Exemption—Lines of Burlington Northern Railroad Company,* Finance Docket No. 32766 (ICC served Jan. 5, 1996).

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 28, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by November 24, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30791 Filed 11–21–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 554X)]

CSX Transportation, Inc.—Abandonment Exemption—in Jasper County, SC and Chatham County, GA

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 14.20 miles of its line of railroad from milepost SHC–497.59 near South Hardeeville, SC, to milepost SHC–505.05, and from milepost SH–505.05 to milepost SH–510.06 at North Savannah, GA and the Hutchison Island Spur from milepost SHB–509.93 to milepost SHB–511.66, in Jasper County, SC and Chatham County, GA. The line traverses United States Postal Service Zip Codes 29927, 31326, 31401, 31407, and 31408.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues, [1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 4, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 15, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 28, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by November 24, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30792 Filed 11–21–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

Monday
November 24, 1997

Part II

Department of Education

34 CFR Part 5b

Privacy Act Regulations; Proposed Rule

Privacy Act of 1974; Notice

DEPARTMENT OF EDUCATION

34 CFR Part 5b

RIN 1880–AA78

Privacy Act Regulations

AGENCY: Office of Inspector General, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Department's regulations implementing the Privacy Act of 1974 (the Act). These amendments are needed to modify existing departmental regulations to exempt from certain provisions of the Act a new system of records known as the Office of Inspector General (OIG) Hotline Complaints Files (System No. 18–10–0004) (ED/OIG Hotline Complaint Files). These exemptions are needed to protect information regarding Hotline complaints from disclosure to target individuals and others who could interfere with the processing and disposition of the information and with law enforcement activities relating to the Hotline complaints.

DATES: Comments must be received by the Department on or before January 8, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dianne Van Riper, U.S. Department of Education, 600 Independence Avenue, SW., Room 4106, Switzer Building, Washington, DC 20202–1530. Comments may also be sent through the Internet to: Comments@ed.gov

You must include the term ''Privacy Act'' in the subject line of the electronic message.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

FOR FURTHER INFORMATION CONTACT: Dianne Van Riper. Telephone: (202) 205–8762. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

General

The proposed exemptions are authorized under the Privacy Act, 5 U.S.C. 552a(j)(2) and (k)(2). Under subsection (j)(2) of the Act, the Secretary through rulemaking may exempt from certain provisions of the Act those systems of records maintained by a component of the Department that performs as its principal function any activity pertaining to the enforcement of criminal laws, if the information in the system is compiled for the purpose of criminal investigation. Under 5 U.S.C. 552a(k)(2), the Secretary through rulemaking may exempt from a more limited number of Privacy Act requirements a system of records that contains investigatory materials compiled for civil and administrative law enforcement purposes.

The OIG is a component of the Department that performs as its principal function investigations into violations of criminal law in connection with the Department's programs and operations, pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. app. 3. The ED/OIG Hotline Complaint Files system of records falls within the scope of subsection (j)(2), *i.e.*, information compiled for the purpose of criminal investigation. The proposed (j)(2) exemptions for criminal law enforcement records would remove restrictions on the manner in which information may be collected and the type of information that may be collected by OIG in processing Hotline information; would limit certain requirements regarding notice to individuals; and would exempt the system of records from civil remedies for violations of the Act. These exemptions are necessary primarily to avoid premature disclosures of sensitive information, including, but not limited to, the existence of a criminal investigation, that may compromise or impede the disposition of Hotline complaints and allegations.

The proposal to add (k)(2) exemptions reflects recognition that certain records in the Hotline system may fall outside the (j)(2) exemptions because they relate primarily to civil and administrative law enforcement, such as allegations of misconduct by Department employees in violation of the Standards of Conduct. Nevertheless, the Act recognizes that these records may also properly be exempted from certain disclosure and notice requirements, as well as restrictions on the manner in which OIG may collect information, in order to avoid compromising, impeding, or interfering with the disposition of those Hotline complaints.

A more complete explanation of each proposed exemption follows.

A. Exemptions Pursuant to (j)(2)

The Secretary has determined that, to the extent the ED/OIG Hotline Complaint Files consist of information compiled for the purpose of criminal investigation, the system of records should be exempt from the following provisions of the Privacy Act and corresponding departmental regulations, as authorized under subparagraph (j)(2) of the Privacy Act, for the following reasons:

1. 5 U.S.C. 552a(c)(3) and 34 CFR 5b.9(a)(1) *require an agency to make the accounting of disclosures from a system of records available to the individual named in the record at the individual's request.* If the OIG made such an accounting available to target or source individuals, the availability of that information could seriously impede or compromise the processing of the Hotline complaint and any resulting criminal investigation by prematurely revealing its existence and nature, compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators, and lead to suppression, alteration, or destruction of evidence.

2. 5 U.S.C. 552a(c)(4) and 34 CFR 5b.7(c) and 5b.8(b) *require an agency to inform parties to whom records have been disclosed about any correction of records or a subject individual's*

statement disputing information in the record. Because the Secretary also proposes to exempt this system of records from the requirements to correct records or to permit an individual to put in his or her records a statement disagreeing with a decision not to correct records, the requirement to inform parties who have received the record is not applicable.

3. 5 U.S.C. 552a(d)(1) through (4) and (f) and 34 CFR 5b.5(a)(1) and (c), 5b.7, and 5b.8 *require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request.* Providing individuals with access to records of Hotline complaints, permitting them to contest the complaint contents, and allowing them to force changes to be made to the information contained in those records seriously interfere with and compromise the OIG's ability to conduct an orderly and unbiased processing of Hotline complaints and would impede the conduct of resulting investigations.

4. 5 U.S.C. 552a(e)(1) and 34 CFR 5b.4(a)(1) *require an agency to maintain in its records only ''relevant and necessary'' information about an individual.* Because it is not always possible to detect the relevance or necessity of each piece of information reported to the Hotline or collected in the preliminary phase of an investigation, this provision is inappropriate for Hotline complaints. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity is clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further inquiry or investigation. Also, the Hotline may obtain information that relates primarily to matters under the investigative jurisdiction of another agency (*e.g.,* the fraudulent use of social security numbers), and that information may not be reasonably segregated. In the interest of effective law enforcement, the OIG should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

5. 5 U.S.C. 552a(e)(2) and 34 CFR 5b.4(a)(3) *require an agency to collect information from the subject individual of the investigation.* The requirement that OIG collect information ''to the greatest extent practicable'' from the target individual is not appropriate for the Hotline Complaint Files system of records where allegations are volunteered to OIG. To determine the proper disposition of the complaint, it is often necessary to conduct an inquiry so that the target individual does not suspect that he or she is being investigated. The requirement to obtain information from targeted individual may alert the suspect of an investigation resulting from a Hotline complaint and thwart the investigation by enabling the suspect to destroy evidence or take another avoidance action.

6. 5 U.S.C. 552a(e)(3) and 34 CFR 5b.4(a)(3) *require an agency to provide a Privacy Act notice in the collection of information from individuals.* Giving notice to a complainant would impair the OIG's ability to collect candid and forthright information of criminal wrongdoing from Hotline sources.

7. 5 U.S.C. 552a(e)(4)(G), (H), and (I) *requires an agency to publish notice of procedures for notification, access, and correction of records and notice of the categories of sources of records in the system.* These requirements are unnecessary, since this system of records will be exempt from the underlying duties imposed by the Privacy Act. An exemption from (I) is required to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants.

8. 5 U.S.C. 552a(e)(5) *requires an agency to maintain records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness.* The OIG makes every effort to maintain records that are accurate, relevant, timely, and complete; however, it is not always possible in processing a Hotline complaint to determine with certainty that all the information collected is accurate, relevant, timely, and complete.

9. 5 U.S.C. 552a(e)(8) *requires an agency to make reasonable efforts to serve notice on an individual if any record on that individual is made available under compulsory legal process if that process becomes a matter of public record.* If the OIG complied with this provision, it could prematurely reveal and compromise an ongoing criminal investigation that resulted from a Hotline complaint.

10. 5 U.S.C. 552a(g) *requires an agency to be subjected to civil remedies from an individual for alleged violations of the Privacy Act.* Allowing civil lawsuits for alleged Privacy Act violations would compromise the orderly and objective processing of Hotline complaints and the conduct of resulting criminal investigations by subjecting the sensitive and confidential information in the ED/OIG Hotline Complaint Files to the possibility of premature disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques.

B. Exemptions Pursuant to (k)(2)

The Secretary has determined that, to the extent the ED/OIG Hotline Complaint Files consist of investigatory material compiled for law enforcement purposes, the system of records should be exempt from the following provisions of the Privacy Act and corresponding departmental regulations, as authorized by subparagraph (k)(2) of the Privacy Act, for the following reasons:

1. 5 U.S.C. 552a(c)(3) and CFR 5b.9(c)(3) *require an agency to make the accounting of disclosures from a system of records available to the individual named in the record at the individual's request.* If the OIG made such an accounting available to target or source individuals, the availability of that information could seriously impede or compromise the processing of the Hotline complaint and any resulting criminal investigation by prematurely revealing its existence and nature, compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators, and lead to suppression, alteration, or destruction of evidence.

2. 5 U.S.C. 552a(d)(1) through (4) and (f) and 34 CFR 5b.5(a)(1) and (c), 5b.7, and 5b.8 *require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request.* Providing individuals with access to records of Hotline complaints, permitting them to contest the complaint contents, and allowing them to force changes to be made to the information contained therein would seriously interfere with and compromise the OIG's ability to conduct an orderly and unbiased processing of Hotline complaints and would impede the conduct of resulting investigations.

3. 5 U.S.C. 552a(e)(1) and 34 CFR 5b.4(a)(1) *require an agency to maintain in its records only ''relevant and necessary'' information about an individual.* Because it is not always possible to detect the relevance or necessity of each piece of information reported to the Hotline or collected in the preliminary phase of an investigation, this provision is inappropriate for Hotline complaints. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity is clear. In other cases, what may appear to be a relevant and necessary piece of information may

become irrelevant in light of further inquiry or investigation. Also, the Hotline may obtain information that relates primarily to matters under the investigative jurisdiction of another agency (*e.g.*, the fraudulent use of social security numbers), and that information may not be reasonably segregated. In the interest of effective law enforcement, the OIG should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

4. 5 U.S.C.552a(e)(4)(G), (H), and (I) *requires an agency to publish notice of procedures for notification, access, and correction of records and notice of the categories of sources of records in the system.* These requirements are unnecessary, since this system of records will be exempt from the underlying duties imposed by the Privacy Act. An exemption from (I) is required to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 5b.11 *Exempt systems.*) (4) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5100, FB–10B), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These proposed regulations involve procedural rights of individuals under the Privacy Act. Individuals are not considered to be ''entities'' under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 5624, GSA Regional Office Building 3, Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 5b

Privacy.

Dated: November 18, 1997.

Richard W. Riley,

Secretary of Education.

(Catalogue of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend Part 5b of Title 34 of the Code of Federal Regulations as follows:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for Part 5b is revised to read as follows:

Authority: 5 U.S.C. 301 and 552a.

2. Section 5b.11 is amended by revising paragraphs (b) introductory text and (c)(1) introductory text to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) *Specific systems of records exempted under (j)(2).* The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–0001) and the Hotline Complaint Files of the Inspector General ED/OIG (18–10–0004) systems of records from the following provisions of 5 U.S.C. 552a and this part:

* * * * *

(c) * * *

(1) The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–0001) and the Hotline Complaint Files of the Inspector General ED/OIG (18–10–0004) from the following provisions of 5 U.S.C. 552a and this part to the extent that these systems of records consist of investigatory material and complaints that may be included in investigatory material compiled for law enforcement purposes:

* * * * *

[FR Doc. 97–30716 Filed 11–21–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974

AGENCY: Office of Inspector General, Department of Education.

ACTION: Notice of a new System of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Education (ED) publishes this notice of a new system of records entitled ''Hotline Complaint Files of the Inspector General.'' The system will contain records of telephone calls and letters directed to the Office of Inspector General (OIG) Hotline citing complaints and allegations of wrongdoing concerning ED programs, ED operations, and recipients of ED-administered program funds. It also will contain information on OIG's handling of these complaints. The allegations reported through the Hotline may give rise to the opening of an investigation, audit, or other OIG inquiry or be referred elsewhere for resolution. The Department seeks comment on this new system of records described in this notice, in accordance with the requirements of the Privacy Act.

DATES: Comments on the proposed routine uses of this system of records must be received by the Department on or before December 24, 1997. The Department filed a report of the new system of records with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 18, 1997. Normally, this system of records would become effective after the 30-day period for OMB review of the system expired, unless OMB gave specific notice within the 30 days that the system was not approved for implementation or required an additional 10 days for OMB review. However, the Secretary proposes to exempt this system of records from certain requirements of the Privacy Act, as authorized under 5 U.S.C. 552a(j)(2) and (k)(2), and this system will not be implemented until the proposed exemptions become final (See the separate notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**). The Department will publish any changes to the system of records that are a result of comments on the system.

ADDRESSES: All comments on the proposed routine uses should be addressed to the Privacy Act Officer, Information Management Group, Office of the Chief Information Officer, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5624, GSA Regional Office Building 3, Washington, D.C. 20202–4651. Comments may also be sent through the Internet to: Comments@ed.gov

You must include the term ''Hotline'' in the subject line of the electronic command.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 5624, 7th & D Streets, S.W., between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for this notice. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dianne Van Riper, Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4106, Switzer Building, Washington, D.C. 20202–1510. Telephone: (202) 205–8762. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Note: The official version of this document is the document published in the **Federal Register**.

General

The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records. The Department's regulations implementing the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) in 34 CFR Part 5b.

The Office of Inspector General (OIG) has long maintained a Hotline that receives numerous telephone calls and letters citing allegations of wrongdoing concerning ED programs, ED operations, and recipients of ED-administered program funds. These Hotline complaints may give rise to the opening of an investigation, audit, or other OIG inquiry or be referred elsewhere for resolution. Records in the Hotline system of records contain information obtained from complainants who report indications of wrongdoing relating to ED programs and operations. In addition, information on the OIG disposition of the complaints is maintained in the system. That information may include name and address (if available) of the complainant, date the complaint was received, identity of individuals against whom the complaint is filed, affected program area, nature and subject of the complaint, and any additional witnesses, contacts, and specific comments provided by the complainant.

Information gained through the Hotline has until now been retained in general complaint files. In order to more effectively carry out OIG's mission of combating fraud, waste, and abuse through administration of the Hotline, OIG intends to reorganize Hotline complaints so that they will be accessible by an individual identifier, if appropriate, and to incorporate that information into the Hotline Complaint Files System. The records contained in this system are used by the OIG in furtherance of the responsibilities of the Inspector General under the Inspector General Act of 1978, as amended (IG Act), to conduct and supervise audits,

investigations, inspections, and other inquiries relating to programs and operations of ED; to promote economy, efficiency, and effectiveness in the administration of those programs and operations; and to prevent and detect fraud and abuse in those programs and operations.

The personal data on individuals will be maintained only to the extent that the information is considered necessary to meet the purposes of the IG Act. Hotline calls not resulting in investigations are destroyed when five years old in accordance with the National Archives and Records Administration's General Records Schedules, GRS 22/item 1a. If OIG opens investigations based upon Hotline information, the resulting investigation files will be part of another existing system of records, the Investigative Files of the OIG (18–10–0001). Investigative case files are destroyed 10 years after close-out in accordance with GRS 22/item 1b.

The records will be kept in locked file cabinets and in computer terminals that are secured in controlled areas. Access to records is limited to authorized personnel who must use a key to retrieve records in the file cabinets and have a password to gain access to records on the computer terminals.

Dated: November 18, 1997.

Thomas R. Bloom,

Inspector General.

The Inspector General of the U.S. Department of Education publishes a notice of a new system of records to read as follows:

18–10–0004

SYSTEM NAME:

Hotline Complaint Files of the Inspector General ED/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Education, 330 C Street, S.W., Room 4116, Switzer Building, Washington, D.C. 20202–1510.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories include individuals who are sources of information or have made complaints to the OIG Hotline, individuals who allegedly have knowledge regarding wrongdoing affecting the programs and operations of the Department, and individuals about whom complaints and allegations have been made concerning wrongdoing involving the programs and operations of the Department of Education. These individuals may include, but are not limited to, current and former ED employees, grantees, subgrantees, contractors, subcontractors, program participants, recipients of Federal funds or federally insured funds, and officers, employees, or agents of institutional recipients or program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system contain information obtained from complainants who report allegations of wrongdoing relating to ED programs and operations. Specific data may include name and address (if available) of the complainant, the date the complaint was received, the affected program area, the nature and subject of the complaint, and any additional contacts and specific comments provided by the complainant. In addition, information on the OIG disposition of the complaint is included in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended (IG Act), 5 U.S.C. app. 3.

PURPOSES:

Pursuant to the Inspector General Act, the system is maintained for the purposes of maintaining a record of complaints and allegations received concerning Department of Education programs and operations and concerning the disposition of those complaints and allegations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses:

(a) *Disclosure for Use by Other Law Enforcement Agencies.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting such a violation or charged with enforcing or implementing the statute, Executive order or rule, regulation, or order issued pursuant thereto.

(b) *Litigation Disclosure.*

(1) Introduction. In the event that one of the following parties is involved in litigation, or has an interest in litigation, ED may disclose certain records to the parties described in paragraphs (2), (3), and (4) of this routine use under the conditions specified in those paragraphs:

(i) ED, or any component of the Department; or

(ii) Any ED employee in his or her official capacity; or

(iii) Any employee of ED in his or her individual capacity if the Department of Justice has agreed to provide or arrange for representation for the employee; or

(iv) Any employee of ED in his or her individual capacity if the agency has agreed to represent the employee; or

(v) The United States if ED determines that the litigation is likely to affect the Department or any of its components.

(2) Disclosure to the Department of Justice. If ED determines that disclosure of certain records to the Department of Justice or attorneys engaged by the Department of Justice is relevant and necessary to litigation, ED may disclose those records as a routine use to the Department of Justice.

(3) Administrative Disclosures. If ED determines that disclosure of certain records to an adjudicative body before which ED is authorized to appear or to an individual or an entity designated by ED or otherwise empowered to resolve disputes is relevant and necessary to the administrative litigation, ED may disclose those records as a routine use to the adjudicative body, individual, or entity.

(4) Opposing Counsels, Representatives, and Witnesses. If ED determines that disclosure of certain records to an opposing counsel, representative, or witness in an administrative proceeding is relevant and necessary to the litigation, ED may disclose those records as a routine use to the counsel, representative, or witness.

(c) *Disclosure to Public and Private Entities to Obtain Information Relevant to ED/OIG Functions and Duties.* ED/OIG may disclose information from this system of records as a routine use to public or private sources to the extent necessary to obtain information from those sources relevant to an ED/OIG investigation, audit, inspection, or other inquiry.

(d) *Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as amended (HEA).* ED/OIG may disclose information from this system of records as a routine use to any accrediting agency that is or was recognized by the Secretary of Education pursuant to the

HEA, to any guarantee agency that is or was a party to an agreement with the Secretary of Education pursuant to the HEA, or to any agency that is or was charged with licensing or legally authorizing the operation of any educational institution or school that was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

(e) Disclosure to the Department of Justice. ED/OIG may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

(f) *Congressional Disclosure.* ED/OIG may disclose information from this system of records to a congressional member from the record of an individual in response to an inquiry from the congressional member made at the written request of that individual. The right of the member to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in complaint files, computer mainframe files, and computer-printed listings.

RETRIEVABILITY:

Hard copy records are organized by and retrievable by the assigned Hotline number. The computer files are indexed and retrievable by Hotline number, name of complainant, and the name of the subject or subjects.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises to which access is limited to those persons whose official duties require access. Computer terminals are secured in controlled areas that are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Hotline records not resulting in investigations are destroyed when five years old, in accordance with the National Archives and Records Administration's General Records Schedules (GRS), GRS 22/item 1a. Investigative case files are destroyed 10 years after close-out in accordance with GRS 22/item 1b.

SYSTEM MANAGER AND ADDRESS:

Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, Room 4106, Switzer Building, 330 C Street, S.W., Washington, D.C. 20202–1510.

NOTIFICATION PROCEDURES:

See ''Systems Exempted.'' As provided in 34 CFR 5b.11(f), the notification procedures are not applicable to Hotline files except at the discretion of the Inspector General. The notification procedures are applicable to noncriminal files only under the conditions in 34 CFR 5b.11(f)(2). To the extent these procedures apply to the ED/OIG Hotline Complaint Files, they are governed by 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures.''

CONTESTING RECORD PROCEDURES:

Not applicable. See ''Systems Exempted.''

RECORD SOURCE CATEGORIES:

Complainants who include, but are not limited to, current and former employees of ED, employees of other Federal agencies, employees of State and local agencies, private individuals, and officers and employees of non-governmental organizations that are involved with ED programs, contracts, or funds or have knowledge about ED programs, contracts, or funds.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has by regulations exempted the Hotline Complaint Files of the Inspector General ED/OIG from the following provisions of the Privacy Act:

(a) Pursuant to 5 U.S.C. 552a(j)(2):

(1) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of a record.

(2) 5 U.S.C. 552a(c)(4), regarding notification to outside parties and agencies of correction or notation of dispute made in accordance with 5 U.S.C. 552a(d).

(3) 5 U.S.C. 552a(d)(1) through (4) and (f), regarding notification or access to records and correction or amendment of records.

(4) 5 U.S.C. 552a(e)(1), regarding maintaining only relevant and necessary information.

(5) 5 U.S.C. 552a(e)(2), regarding collection of information from the subject individual.

(6) 5 U.S.C. 552a(e)(3), regarding notice to individuals asked to provide a record to the Department.

(7) 5 U.S.C. 552a(e)(4)(G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

(8) 5 U.S.C. 552a(e)(5), regarding maintaining records with requisite accuracy, relevance, timeliness, and completeness.

(9) 5 U.S.C. 552a(e)(8), regarding service of notice on subject individual if a record is made available under compulsory legal process if that process becomes a matter of public record.

(10) 5 U.S.C. 552a(g), regarding civil remedies for violation of the Privacy Act.

(b) Pursuant to 5 U.S.C. 552a(k)(2):

(1) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of records.

(2) 5 U.S.C. 552a(d)(1) through (4) and (f), regarding notification of and access to records and correction or amendment of records.

(3) 5 U.S.C. 552a(e)(1), regarding the requirement to maintain only relevant and necessary information.

(4) 5 U.S.C. 552a(e)(4)(G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

These exemptions are stated in 34 CFR 5b.11.

[FR Doc. 97–30715 Filed 11–21–97; 8:45 am]
BILLING CODE 4000–01–P

Federal Register

Monday
November 24, 1997

Part III

The President

Proclamation 7051—National Great American Smokeout Day, 1997

Federal Register
Vol. 62, No. 226
Monday, November 24, 1997

Presidential Documents

Title 3—

The President

Proclamation 7051 of November 20, 1997

National Great American Smokeout Day, 1997

By the President of the United States of America

A Proclamation

For 21 years, this special day has been devoted to communicating a simple message: if you smoke, you need to quit—for life. Smoking is the largest cause of preventable death in this country, eventually killing one of every two people who continue to smoke. Every day, 3,000 adolescents in America smoke their first cigarette, taking the first step to becoming regular smokers, and one-third of these new smokers will eventually die of tobacco-related diseases. Each of these devastating statistics represents a personal tragedy, needless suffering, and irreparable loss.

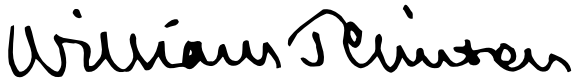
Because most smokers—more than 80 percent of them—begin smoking before their 18th birthday, my Administration is working hard to reach children before they decide to start. Last year, I announced tough measures to limit children's access to tobacco products and to reduce their appeal to young people. Now we are working with the Congress, the public health community, State attorneys general across the country, and other interested organizations to develop and pass comprehensive national legislation to reduce teen smoking significantly.

Such legislation must set ambitious targets to cut teen smoking rates and stiff financial penalties to help ensure that tobacco companies meet those targets. To counteract the pervasive influence of cigarette and smokeless tobacco advertising and promotion, we must mount a nationwide effort to strip tobacco of its allure, warning our young people of its addictive nature and deadly consequences and helping parents discourage their children from ever taking up the habit. The Food and Drug Administration must have full authority to see to it that industry develops less addictive, reduced-risk products. And we must strengthen and expand our current efforts to limit the advertising of tobacco to children and restrict young people's access to tobacco products.

The Great American Smokeout offers all Americans, smokers and nonsmokers alike, an invaluable opportunity to show our young people how much we care about them and how much their good health means to us. I urge the almost 48 million adult Americans and 4 million of our young people who still smoke to set an example of strength and determination by quitting for the day and, ultimately, for life. I encourage students across the Nation to participate in Smokeout activities designed to teach them about the dangers of smoking. I ask all Americans to renew their commitment to a smoke-free environment for themselves and for our children. If we can accomplish these goals today, we can do so every day, creating a better, healthier future for us all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 20, 1997, as National Great American Smokeout Day. I call upon all Americans to join together in an effort to educate our children about the dangers of tobacco use, and I urge both smokers and nonsmokers to take this opportunity to begin healthier lifestyles that set a positive example for young people.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 97–31069
Filed 11–21–97; 11:41 am]
Billing code 3195–01–P

Federal Register

Monday
November 24, 1997

Part IV

Office of Management and Budget

Cancellation Pursuant to Line Item Veto Act; Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, and Department of Interior and Related Agencies Appropriations Act, 1998; Notices

OFFICE OF MANAGEMENT AND BUDGET

Cancellation Pursuant to Line Item Veto Act; Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, and Department of Interior and Related Agencies Appropriations Act, 1998

November 20, 1997.

Two Special Messages from the President under the Line Item Veto Act are published below. The President signed these messages on Novmeber 20, 1997. Under the Act, the messages are required to be printed in the **Federal Register** (2 U.S.C. 691a(c)(2)).

Clarence C. Crawford,

Associate Director for Administration.

THE WHITE HOUSE,
Washington
November 20, 1997.

Dear Mr. Speaker:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the ''Department of the Interior and Related Agencies Appropriations Act, 1998'' (H.R. 2107). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton

The Honorable Newt Gingrich,
Speaker of the House of Representatives, Washington, D.C. 20515

THE WHITE HOUSE,
Washington
November 20, 1997.

Dear Mr. President:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the ''Department of the Interior and Related Agencies Appropriations Act, 1998'' (H.R. 2107). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton

The Honorable Albert Gore, Jr.
President of the Senate, Washington, D.C. 20510

Cancellation No. 97–75

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: ''Department of the Interior and Related Agencies Appropriations Act, 1998'' (H.R. 2107)

1(A). Dollar Amount of Discretionary Budget Authority: $1,000 thousand for Franklin County Dam on page 83 of House Report 105–337, dated October 22, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: These funds would be used to obtain land survey information necessary for planning the construction for a new dam on Forest Service (USDA) land in Mississippi. The funds are being canceled because (1) they were not requested in the President's FY 1998 Budget and would be used to plan the construction of a recreation dam that has substantial out-year funding costs, which are unlikely to be accommodated within projected USDA funding levels unless higher-priority projects are postponed; and (2) the Forest Service does not traditionally construct dams, for recreational or any other purpose. Construction of this dam is currently estimated to cost about $12 million.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−750
1999	−250
2000	.....
2001	.....
2002	.....
2003–07	.....
Total	−1,000

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$1,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Forest Service.

2(A). Governmental Function/Project (Account): Franklin County Dam Recreation Facilities (Reconstruction and Construction).

2(B). States and Congressional Districts Affected: Mississippi, 2nd and 4th Congressional Districts.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Mississippi: two; 2nd District: one; 4th District: two.

Cancellation No. 97–76

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: ''Department of the Interior and Related Agencies Appropriations Act, 1998'' (H.R. 2107).

1(A). Dollar Amount of Discretionary Budget Authority: $5,200 thousand with respect to the conveyance to the State of Montana of $10 million in Federal mineral rights in Montana, under Section 503(a)(1)–(2) of the Act.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation: Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: In connection with the Crown Butte/New World Mine acquisition (addressed in Section 502 of the Act), Section 503 provides for the uncompensated conveyance to the State of Montana of either $10 million in Federal mineral rights in Montana or the Federal mineral rights in Otter Creek Tracts 1, 2 and 3 (in Montana).

Section 503 would cause Federal taxpayers to lose their share of royalties from Federally owned lands, which would normally be split between the State where the Federal owned lands are located and the U.S. Treasury upon development of Federal mineral rights. The Federal share would be $5.2 million. The section would set a costly precedent by requiring the Federal Government to ''compensate'' a State for a purchase or exchange of lands between the Federal Government and a willing seller. This precedent could therefore discourage innovative, cost-effective land protection solutions in the future.

This cancellation applies to the budget authority under each of the alternative conveyances under Section 503(a)(1)–(2).

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal budget authority will not increase, as specified below (the amount of the effect depends on whether mineral rights would have been conveyed under Section 503(a)(1) or Section 503(a)(2); as discussed below, we estimate that mineral rights would more likely have been conveyed under Section 503(a)(1); Section 503 would not require a reduction in spending). This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Budget Authority changes under cancellation of section 503(a)(1)

[In thousands of dollars]

Fiscal year:	
1998	−1,300
1999	−1,300
2000	−1,300
2001	−1,300
2002	.....
2003–07	.....
Total	−5,200

Budget Authority changes under cancellation of section 503(a)(2)

[In thousands of dollars]

Fiscal year:	
1998	.....
1999	.....
2000	.....
2001	.....
2002	.....
2003–07	−1,352
Total	−1,352

The negotiations requirement in Section 503(b), and the legislative history of Section 503, make clear it was intended that the Secretary would convey $10 million in Federal mineral rights in the State of Montana under Section 503(a)(1), rather than all Federal mineral rights in Otter Creek Tracts 1, 2, and 3 under Section 503(a)(2), and it is most likely that this is what the Secretary would have done. The discretionary budget authority in both Section 503(a)(1) and Section 503(a)(2) is canceled, but because the Secretary could not have made both conveyances, and the dollar amount of discretionary budget authority for the intended and most likely conveyance under Section 503(a)(1) exceeds the dollar amount of discretionary budget authority for the alternative conveyance under Section 503(a)(2), the dollar amount of discretionary budget authority reflected above in 1(A), and the adjustments to discretionary spending limits below in 1(F), are based upon the intended and most likely conveyance under Section 503(a)(1).

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: The estimated budget authority effect (in FY 1998 through FY 2002) is shown above (based on the figures for a conveyance under Section 503(a)(1), as discussed in 1(D)).

Outlays: The estimated outlay effect for each year is the same as the estimated effect of budget authority.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of the Interior.

2(A). Bureau: Bureau of Land Management.

2(A). Governmental Function/Project (Account): Natural Resources and Environment/Conveyance to State of Montana (net receipts from mineral leasing on Federal lands are deposited, by formula, to Rent and Bonuses From Land Leases for Resource Exploration and Extraction; and Royalties on Natural Resources, not Otherwise Classified (General Fund accounts), and Reclamation Fund, All Other, Royalties on Natural Resources (Reclamation Fund account)).

2(B). States and Congressional Districts Affected: Montana, At Large.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Montana: four.

THE WHITE HOUSE
Washington
November 20, 1997.

Dear Mr. Speaker:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the ''Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998'' (H.R. 2160). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton

The Honorable Newt Gingrich,
Speaker of the House of Representatives, Washington, DC 20510

THE WHITE HOUSE
Washington
November 20, 1997.

Dear Mr. President:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the ''Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998'' (H.R. 2160). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton

The Honorable Albert Gore, Jr.,
President of the Senate, Washington, DC 20510

Cancellation No. 97–77

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1998 (H.R. 2160).

1(A). Dollar Amount of Discretionary Budget Authority: $900 thousand for Biocontrol and Insect Rearing Laboratory, Stoneville, Mississippi, on p.41 of House Report 105–252, dated September 17, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: USDA's Agriculture Research Service (ARS) currently conducts insect mass rearing/augmentative biological control research at the State-owned Gast Facility in Starkville, Mississippi. The Gast Facility has been used for the mass propagation of insect pests and biological control agents for several decades, and this grant would provide funding to renovate the facility. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) these funds would provide for planning of this facility and would require additional future appropriations for construction ($12.9 million); (3) ARS conducts insect rearing at nearly 30 other locations; and (4) the need for additional research facilities is under review by the Strategic Planning Task Force mandated by the 1996 Farm Bill to review potential consolidations of Federal agricultural research facilities. The Task Force report is due in April 1999.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−400
1999	−500
2000	.....
2001	.....
2002	.....
2003–2007	.....
Total	−900

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$900 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Agricultural Research Service.

2(A). Governmental Function/project (Account): Agricultural Research and Services/Biocontrol and Insect Rearing Laboratory, Stoneville, Mississippi (Buildings and Facilities).

2(B). States and Congressional Districts Affected: Mississippi, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Mississippi: three; 2nd Congressional District: two.

Cancellation No. 97–78

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: ''Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1998'' (H.R. 2160).

1(A). Dollar Amount of Discretionary Budget Authority: $600 thousand for the Poisonous Plant Laboratory, Logan, Utah, on page 42 of House Report 105–252 dated September 17, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The funds would be used for planning and design of an office and laboratory building to house the staff of the Poisonous Plants Laboratory, an Agricultural Research Service (USDA) facility in Logan, Utah. A new facility would replace an existing, aged building that has been expanded periodically. The Poisonous Plants Laboratory's mission is to strengthen the livestock industry by reducing economic losses caused by poisoning. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) these funds would provide for planning of this facility and would require additional future appropriations for construction ($4.8 million); and (3) the need for additional research facilities is under review by the Strategic Planning Task Force mandated by the 1996 Farm Bill to review potential consolidations of Federal agricultural research facilities. The Task Force report is due in April 1999.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−300
1999	−300
2000	.....
2001	.....
2002	.....
2003–07	.....
Total	−600

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −-$600 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Agricultural Research Service.

2(A). Governmental Function/Project (Account): Agricultural Research and Services/Poisonous Plant Laboratory, Logan, Utah (Buildings and Facilities).

2(B). States and Congressional Districts Affected: Utah, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Utah: two; 1st District: one.

Cancellation No. 97–79

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: ''Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998'' (H.R. 2160).

1(A). Dollar Amount of Discretionary Budget Authority: $250 thousand for Special Research Grants, project ''Dairy, Alaska'' on page 43 of House Report 105–252, dated September 17, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and

Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: Funding for this project at the University of Alaska would support research on high energy and high protein feeds to meet the nutritional requirements of dairy cattle in the State of Alaska. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) USDA currently funds a large amount (several million dollars worth) of research on the nutritional requirements of dairy cows that addresses needs of dairy farmers nationwide, whereas this grant focuses on the specific production and economic issues facing the dairy industry in Alaska; (3) the President's Budget proposals emphasize high priority programs in the national interest and competitively-awarded research to ensure that limited financial resources are used to support only the highest quality research; and (4) without this project, the University of Alaska would be able to conduct this research if it chooses to use its federal Hatch Act formula funds.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−25
1999	−75
2000	−75
2001	−50
2002	−25
2003–07	
Total	−250

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$250 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Cooperative State Research, Education, and Extension Service.

2(A). Governmental Function/Project (Account): Agricultural Research and Services/Dairy, Alaska (Research and Education Activities).

2(B). States and Congressional Districts Affected: Alaska, At-Large.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Alaska: three.

Cancellation No. 97–80

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: ''Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998'' (H.R. 2160)

1(A). Dollar Amount of Discretionary Budget Authority: $140 thousand for Special Research Grants, project ''Hydroponic Tomato Production, Ohio'' on page 43 of House Report 105–252, dated September 17, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The purpose of this Ohio State University project is to develop and demonstrate state-of-the-art hydroponic technology, solar greenhouses, and Internet tools to achieve year-round tomato growing systems that are capable of consistently producing high-quality, pesticide-free tomatoes for consumers. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) the President's Budget proposals emphasize high priority programs in the national interest and competitively-awarded research to ensure that limited financial resources are used to support only the highest quality research; and (3) Ohio State University has been conducting hydroponic tomato research for approximately thirty years, and would be able to conduct this project if it chooses to use its federal Hatch Act formula funds or other resources.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−14
1999	−42
2000	−42
2001	−28
2002	−14
2003–07	
Total	−140

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$140 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Cooperative State Research, Education, and Extension Service.

2(A). Governmental Function/Project (Account): Agricultural Research and Services/Hydroponic Tomato Production, Ohio (Research and Education Activities).

2(B). States and Congressional Districts Affected: Ohio, 12th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Ohio: one; 12th District: one.

Cancellation No. 97–81

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: ''Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998'' (H.R. 2160).

1(A). Dollar Amount of Discretionary Budget Authority: $50 thousand for Special Research Grants, project ''Plant Genome Research, Ohio'' on page 43 of House Report 105–252, dated September 17, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and

Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project at Ohio State University would support the development of a ''Bacterial Artificial Chromosome'' (BAC) database constructed using Tripsacum dactyloides, a wild variety of corn. The availability of a BAC Tripsacum database would facilitate the map-based cloning of those genes regulating hybrid vigor. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) the President's Budget Proposals emphasize higher priority programs in the national interest and competitively-awarded research to ensure that limited financial resources are used to support only the highest quality research; (3) without this project, Ohio State University (at which the library would be maintained) could conduct this research using its federal Hatch Act formula funds, or the principal investigator could compete for the $40 million available in FY 1998 through the National Science Foundation for plant genome research.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−5
1999	−15
2000	−15
2001	−10
2002	−5
2003–07	.....
Total	−50

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$50 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Cooperative State Research, Education, and Extension Service.

2(A). Governmental Function/Project (Account): Agricultural Research and Services/Plant Genome Research, Ohio (Research and Education Activities).

2(B). States and Congressional Districts Affected: Ohio, 12th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Ohio: two; 12th District: two.

[FR Doc. 97–31034 Filed 11–21–97; 2:48 pm]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

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H.R. 282/P.L. 105–87

To designate the United States Post Office building located at 153 East 110th Street, New York, New York, as the ''Oscar Garcia Rivera Post Office Building''. (Nov. 19, 1997; 111 Stat. 2113)

H.R. 681/P.L. 105–88

To designate the United States Post Office building located at 313 East Broadway in Glendale, California, as the ''Carlos J. Moorehead Post Office Building''. (Nov. 19, 1997; 111 Stat. 2114)

H.R. 867/P.L. 105–89

Adoption and Safe Families Act of 1997 (Nov. 19, 1997; 111 Stat. 2115)

H.R. 1057/P.L. 105–90

To designate the building in Indianapolis, Indiana, which houses the operations of the Indianapolis Main Post Office as the ''Andrew Jacobs, Jr. Post Office Building''. (Nov. 19, 1997; 111 Stat. 2137)

H.R. 1058/P.L. 105–91

To designate the facility of the United States Postal Service under construction at 150 West Margaret Drive in Terre Haute, Indiana, as the ''John T. Meyers Post Office Building''. (Nov. 19, 1997; 111 Stat. 2138)

H.R. 1377/P.L. 105–92

Savings Are Vital to Everyone's Retirement Act of 1997 (Nov. 19, 1997; 111 Stat. 2139)

H.R. 1479/P.L. 105–93

To designate the Federal building and United States courthouse located at 300 Northeast First Avenue in Miami, Florida, as the ''David W. Dyer Federal Building and United States Courthouse''. (Nov. 19, 1997; 111 Stat. 2146)

H.R. 1484/P.L. 105–94

To redesignate the United States courthouse located at 100 Franklin Street in Dublin, Georgia, as the ''J. Roy Rowland United States Courthouse''. (Nov. 19, 1997; 111 Stat. 2147)

H.R. 1747/P.L. 105–95

John F. Kennedy Center Parking Improvement Act of 1997 (Nov. 19, 1997; 111 Stat. 2148)

H.R. 1787/P.L. 105–96

Asian Elephant Conservation Act of 1997 (Nov. 19, 1997; 111 Stat. 2150)

H.R. 2129/P.L. 105–97

To designate the United States Post Office located at 150 North 3rd Street in Steubenville, Ohio, as the ''Douglas Applegate Post Office''. (Nov. 19, 1997; 111 Stat. 2154)

H.R. 2367/P.L. 105–98

Veterans' Compensation Rate Amendments of 1997 (Nov. 19, 1997; 111 Stat. 2155)

H.R. 2564/P.L. 105–99

To designate the United States Post Office located at 450 North Centre Street in Pottsville, Pennsylvania, as the ''Peter J. McCloskey Postal Facility''. (Nov. 19, 1997; 111 Stat. 2159)

H.R. 2607/P.L. 105–100

Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1998, and for other purposes. (Nov. 19, 1997; 111 Stat. 2160)

S. 813/P.L. 105–101

Veterans' Cemetery Protection Act of 1997 (Nov. 19, 1997; 111 Stat. 2202)

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●§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
●§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
●§§ 1.851–1.907	(869–032–00085–9)	34.00	Apr. 1, 1997
●§§ 1.908–1.1000	(869–032–00086–7)	34.00	Apr. 1, 1997
●§§ 1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
●§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
●2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
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●40–49	(869–032–00091–3)	17.00	Apr. 1, 1997
●50–299	(869–032–00092–1)	18.00	Apr. 1, 1997
●300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
500–599	(869–032–00094–8)	6.00	[4] Apr. 1, 1990
●600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
1–199	(869–032–00096–4)	48.00	Apr. 1, 1997

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●43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
●0–99	(869–032–00100–5)	27.00	July 1, 1997
●100–499	(869–032–00101–4)	12.00	July 1, 1997
●500–899	(869–032–00102–2)	41.00	July 1, 1997
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1910 (§§ 1910.1000 to end)	(869–032–00105–7)	29.00	July 1, 1997
●1911–1925	(869–032–00106–5)	19.00	July 1, 1997
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●1927–End	(869–032–00108–1)	40.00	July 1, 1997
30 Parts:			
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●700–End	(869–032–00111–1)	32.00	July 1, 1997
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200–End	(869–032–00113–8)	42.00	July 1, 1997
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1–190	(869–032–00114–6)	42.00	July 1, 1997
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●400–629	(869–032–00116–2)	33.00	July 1, 1997
●630–699	(869–032–00117–1)	22.00	July 1, 1997
●700–799	(869–032–00118–9)	28.00	July 1, 1997
●800–End	(869–032–00119–7)	27.00	July 1, 1997
33 Parts:			
1–124	(869–032–00120–1)	27.00	July 1, 1997
125–199	(869–032–00121–9)	36.00	July 1, 1997
●200–End	(869–032–00122–7)	31.00	July 1, 1997
34 Parts:			
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●300–399	(869–032–00124–3)	27.00	July 1, 1997
●400–End	(869–032–00125–1)	44.00	July 1, 1997
●**35**	(869–032–00126–0)	15.00	July 1, 1997
36 Parts			
●1–199	(869–032–00127–8)	20.00	July 1, 1997
200–299	(869–032–00128–6)	21.00	July 1, 1997
300–End	(869–032–00129–4)	34.00	July 1, 1997
●**37**	(869–032–00130–8)	27.00	July 1, 1997
38 Parts:			
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●**39**	(869–032–00133–2)	23.00	July 1, 1997
40 Parts:			
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*●50–51	(869–032–00135–9)	23.00	July 1, 1997
●52	(869–028–00142–4)	51.00	July 1, 1996
*●53–59	(869–032–00138–3)	14.00	July 1, 1997
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●61–62	(869–032–00140–5)	19.00	July 1, 1997
●63–71	(869–032–00141–3)	57.00	July 1, 1997
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●81–85	(869–032–00143–0)	32.00	July 1, 1997
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●87-135	(869–032–00145–6)	40.00	July 1, 1997
●136–149	(869–032–00146–4)	35.00	July 1, 1997
●150–189	(869–032–00147–2)	32.00	July 1, 1997
●190–259	(869–032–00148–1)	22.00	July 1, 1997
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43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
●1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
●**44**	(869–028–00168–8)	31.00	Oct. 1, 1996
45 Parts:			
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●200–499	(869–028–00170–0)	14.00	[5] Oct. 1, 1995
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46 Parts:			
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●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
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●140–155	(869–028–00177–7)	15.00	Oct. 1, 1996
●156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
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47 Parts:			
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●40–69	(869–028–00184–0)	18.00	Oct. 1, 1996
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.